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Margaret E. Beare
Project Manager
Chief Police Research

and

Stephen Schneider
Research Officer

TRACING OF ILLICIT FUNDS: MONEY LAUNDERING IN CANADA

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The views expressed in this working paper are those of the authors and are not necessarily those of the Ministry of the Solicitor General of Canada.

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FOREWORD

This study of money laundering in Canada was initiated by the Police and Security Branch of the Ministry of the Solicitor General of Canada, as follow-up to recommendations made by the Federal/Provincial Task Force on Enterprise Crime. The final report of that task force presented recommendations in the areas of legislation, enforcement, and research (Canada, Department of Justice, 1983).

Many of the issues raised in the Task Force report have been addressed through the introduction of new legislation and changes in law enforcement strategies. Of fundamental importance, the federal government amended the Criminal Code and the drug control statutes by passing the "proceeds of crime" legislation (S.C. 1988, c. 51) which came into force on January 1, 1989. This legislation makes money laundering a criminal offence, and allows for the seizure and forfeiture of illicit proceeds obtained from specified "enterprise crime" and drug-related offenses.

This legislation is pivotal to Canada's new law enforcement philosophy, which recognizes that any attempts to combat drug trafficking and other organized criminal activities must incorporate the means to deprive criminals of their proceeds. The objective of law enforcement is thus to dismantle criminal organizations by seizing illicit profits, rather than merely targeting individual criminals.

This research study attempts to assist law enforcement and regulatory agencies in their efforts to prevent and deter money laundering, by providing an empirical analysis of this activity.

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Many individuals and entire organizations assisted us with this project. The report would not have been possible without the cooperation and encouragement of the Royal Canadian Mounted Police (RCMP) who allowed access to their police case information and loaned us the expertise of Constable Brian Sargent and Corporal Richard Lussier. Inspector Bruce Bowie from the RCMP Anti-Drug Profiteering Unit was particularly helpful in sharing with us his knowledge of proceeds of crime investigations.

Likewise, numerous individuals from the financial and business community provided us with detailed information and helped us to understand the various transactions and services offered by their organizations.

Fred Bobiasz enlightened us with his knowledge and experience related to international and legal matters. Ian Taylor contributed to our understanding of the free market economy. Don Banks assisted with information related to revenue matters and part-time researchers including Andrew Lister, Bruce Clark and Katia Gianneschi contributed in significant ways to the project. Finally, Wanda Jamieson and Anne Gilmore rendered disparate chapters into this coherent whole.

We thank everyone for their support and assistance.

EXECUTIVE SUMMARY: MONEY LAUNDERING IN CANADA

I. INTRODUCTION

As a result of international and national pressures, a new law enforcement philosophy has emerged in Canada which recognizes that attempts to combat drug trafficking and other organized criminal activities must incorporate the means to strip the illicit profits from criminals and thereby reduce their motivation to remain in business. This has been explicitly recognized by the RCMP for most of this decade and has been recently entrenched in the Criminal Code through Bill C-61, the "proceeds of crime" legislation (S.C. 1988, c. 51).

In light of this new law enforcement focus, and in an attempt to provide an educational tool for Canadian law enforcement in their efforts to trace, seize and forfeit the illegal proceeds of crime, the Ministry of the Solicitor General of Canada undertook a comprehensive examination of money laundering in Canada.[1]

Based upon a qualitative analysis of over 150 police cases involving money laundering supplied by the RCMP and municipal police forces, this research provides a detailed analysis of the salient and common characteristics of laundering cases. Further, it examines the vulnerability of Canadian business and financial institutions to laundering operations and identifies those elements in our society which are directly implicated in reducing the infiltration of proceeds of crime into the legitimate sectors of the Canadian economy.

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[1] The definition of money laundering as used in this research is based on the concept used by the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which can be summarized as: the conversion of illicit cash to another asset, the concealment of the true source or ownership of the illegally acquired proceeds, and the creation of the perception of legitimacy of source and ownership (Article 3, paragraph 1(b) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, E/CONF.82/15 of 19 December 1988).

Narcotics trafficking and other organized illegal activities in Canada generate billions of dollars annually.[2] Cash is the universally accepted mode of payment in this underground economy and, as such, illicit revenue will take the form of currency. Consequently, organized criminals, in particular drug traffickers, accumulate cumbersome amounts of cash which leaves them highly susceptible to suspicion. For criminals to derive the maximum benefit from the fruits of their illegal business they must devise a system which makes any illegally acquired wealth appear to be derived from legitimate sources.

II. POLICE CASE ANALYSIS

This report emphasizes that money laundering is a process rather than an act. This process may involve numerous and complex stages. A review of Canadian police cases reveals that methods of money laundering range from the simple to the sophisticated and are limited only by the imagination of the criminal enterprise. Indeed, the vast majority of legitimate business and financial transactions available in our society can be used as laundering vehicles. Further, the sectors of Canada's business and financial communities are not mutually exclusive but critically interconnected. In other words, sectors vulnerable to money laundering will often be used in conjunction with one another in a laundering scheme.

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[2] There is no verifiable method for determining the size of the illicit economy. Estimated figures in this area of illicit proceeds, however carefully calculated, are only guesses. Once stated they take on a reality they do not deserve.

An analysis of police cases has identified the following vehicles used by criminal enterprises in their laundering activities or to facilitate their laundering schemes:

- deposit-taking institutions;
- currency exchange houses;
- the securities market;
- real estate;
- the incorporation and operation of companies;
- gold and precious gems;
- miscellaneous laundering vehicles including the insurance industry, legalized gaming facilities, and automobile, boat and plane dealerships, professional courier services, travel agencies;
- white-collar professionals including lawyers and accountants; and,
- transborder movement of illicit proceeds.

A. Deposit-taking Institutions

In Canada, deposit-taking institutions (chartered banks, trust companies and credit unions) are the single most frequently used vehicle available to the launderer. More importantly, deposit-taking institutions constitute a crucial medium connecting the criminal enterprise with other laundering vehicles.

The popularity of deposit-taking institutions as a laundering vehicle derives from the fact that the services offered (i.e. providing financial intermediary services and facilitating the conversion of cash to other forms of negotiable instruments) are those most desired by launderers.

Canadian deposit-taking institutions possess attributes which make them particularly attractive as laundering vehicles. This includes an efficient clearing system, location in a politically and economically stable country, international connections, (including branches in tax haven countries) and a traditional reputation for adherence to banker-client confidentiality.

These qualities are sought after by domestic launderers, and as significantly, by launderers outside of Canada. Police investigations indicate that during the first year of the "proceeds of crime" legislation and despite enhanced measures taken by the banking industry, illicit funds originating outside the country were still finding their way into Canadian deposit institutions.

Chartered banks are the institutions most cited in police cases involving money laundering. However, there is some indication in the most recent cases that launderers may also be turning to smaller, regional, credit unions and trust companies.

Characteristics identified in laundering cases involving deposit-taking institutions encompass the following:

. wire transfers and negotiable instruments represent the two most commonly used services to launder illicit money. Other services include currency exchange, denomination exchange, government savings bonds and Treasury Bills and safety deposit boxes;

. although the deposit of money into an account is not absolutely necessary to gain access to the services of a bank, launderers will often utilize this as a first step;

. sophisticated launderers often utilize more than one account, branch and/or financial institution within a single laundering process;

. in order to conceal ownership of accounts and to avoid suspicion, launderers may use money couriers (or "smurfs"[3]), to make a large number of relatively small deposits, use false identification, open accounts and conduct transactions under the auspices of a legitimate business or a shell company, and conduct transactions through computerized banking facilities. Further, some cases have involved accounts registered in the name of the deposit-taking institution itself[4];

. launderers attempt to establish a friendly but business-like relationship with bank officials in order to gain their trust. The purpose is to establish the launderer as a reliable, trust-worthy, up-standing (not-to-mention lucrative) customer. Building up a relationship with the banks is increasingly required as banks enhance their "know your customer" policies;

. in addition to cooptation of naive bank officials, some cases involve the assistance of corrupt branch officials;

. the use of branches of Canadian banks in tax haven countries is a popular laundering mechanism for both Canadian and international criminal enterprises.

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[3] The term "Smurfs" originated with the cartoon characters who are diverse in age and appearance but all look innocuous. The term has come to mean the innocent-looking people who are hired by criminals to carry money into banks and other laundering vehicles and otherwise assist them to launder their illicit funds.

[4] One case involved a criminal who laundered over $12 million in three months through a single account at the Caisse Populaire in Montreal. The account was registered in the name of the Caisse itself.

B. Foreign Currency Exchange Houses

Foreign currency exchange houses serve as popular and effective laundering vehicles. In addition to currency exchange and denomination exchange, they offer many services traditionally associated with banking institutions. They also often serve as the intermediary between the criminal client and the banking institutions in obtaining negotiable instruments and wire transfers.

Converting Canadian to American currency constitutes an important step in the laundering process. There are two reasons for this specific exchange. First, a significant amount of illicit funds flow to the U.S. Secondly, proceeds of crime also flow outside of North America (either for the purposes of further laundering or the purchase of illicit drugs) where the American dollar is commonly accepted as the international currency standard--even in the illicit drug trade.

Police cases reveal:

- some currency exchange houses in Canada are either particularly vulnerable to laundering or specifically offer these services to criminal organizations. One exchange business have been identified as having facilitated the laundering of over $20 million (CDN);
- currency exchange houses may be set up as store-front operations. Through the use of a fake currency exchange house, the criminal enterprise can deposit large amounts of currency into banking institutions without causing suspicion;
- like many of the laundering vehicles, exchange houses are used in combination with many other financial institutions and often provide the legitimacy that removes suspicion from otherwise questionable transactions.

C. Securities Market

The securities industry can be used as a laundering vehicle in two fundamental ways. Securities may be bought and sold by a launderer through a brokerage firm, or, proceeds of crime may be invested in a private company which then goes public and issues shares. Police cases indicate that it is the former which is most popular among launderers.

Transacting in securities offers the criminal enterprise the opportunity to convert illicit funds into a highly liquid asset while retaining anonymity through such means as nominee accounts--a commonly accepted practice in the securities market. Money laundering, with its emphasis on transborder movements of illicit funds, in turn has taken advantage of the continual globalization of the securities market, and tax haven countries, to obstruct any subsequent paper trail.

In addition to the proceeds of drug trafficking, illicit profits generated from traditional securities-related crimes, such as insider trading or market manipulation, are laundered through securities investments. Thus the laundering process often takes advantage of the very same trading and investment mechanisms utilized in the original offence.

Police cases reveal:

. trading accounts established at brokerage firms represent the principle vehicle through which proceeds of crime enter the securities market;

. brokerage firms are often used simply as a financial institution. Negotiable instruments are obtained or wire transfers facilitated through the offices of brokerage firms. Currency exchanges by launderers even occur at offices of brokerage firms. Stock certificates issued in bearer form are a popular and effective laundering vehicle for they can be cashed by anyone in possession of them, thereby concealing their true ownership;

. launderers will utilize several fronts to launder money through brokerage houses, including "smurfs", fake identification, shell or legitimate companies, financial institutions and tax haven countries;

. while cash directly generated from a laundering transactions can be taken to a brokerage firm, a prior step usually involves conversion of illicit cash into negotiable instruments through a banking institution to avoid suspicion.

D. Real Estate Industry

The buying and selling of real estate is very useful in laundering the proceeds of crime. Real estate satisfies the requisite of converting illicit cash into a less suspicious form and, because a vast array of laundering techniques can be used in conjunction with real estate, the trail is effectively destroyed.

Once real estate has been purchased it can be used to create a seemingly legitimate source of revenue for the criminal enterprise. Some of the laundering schemes involve manipulating the reported value of property, with the result that inflated purchase prices or profit generating sales "legitimate" the acquisition of illicit profits.

Police cases indicate:

. money laundering through real estate ranges from simple investment in homes for personal use to sophisticated schemes. The more complex schemes involve the investment of illicit funds into undeveloped industrial and residential properties and the subsequent development of these properties financed by illicit proceeds funnelled through a complex international maze of financial institutions, tax haven countries, lawyers, and shell companies;

. residential properties--both developed and undeveloped-- are most popular among launderers. On some occasions, launderers immediately sold the property, in other cases the property was held for a long term investment and rented out so that the rental income was intermingled with the criminal proceeds;

. sophisticated launderers will utilize mediums which offer inconspicuous access to real estate. In particular, launderers will incorporate real estate agencies, mortgage-brokerage firms, development and construction companies and utilize lawyers to funnel illicit proceeds into real estate;

E. The Incorporation and Operation of Companies

Launderers incorporated and operated all types of companies as laundering vehicles. These companies serve as mechanisms for investment and control by the criminal enterprise. Companies offer criminals a legitimate source of employment in local communities, offer a source of reportable income that can account for a conspicuous display of wealth, and provide apparent respectability. In some cases the legitimate business serves as a base from which to operate illegally. As a laundering vehicle, companies serve as a guise for the profits generated by criminal activities and conceal the true source and beneficial owner of illicit capital.

Police cases indicate:

. companies serve as effective intermediaries to access other laundering vehicles. A hierarchy of parent-subsidiary relationships of companies provides an effective means to conceal criminal ownership. One police case revealed that a single drug trafficking organization incorporated fourteen companies in Canada to facilitate the laundering of its drug trafficking proceeds;

. launderers utilize both shell companies and legitimate companies. Passing funds through corporations creates a difficult paper trail and serves the launderer by concealing the source of the proceeds;

. legitimate companies may serve as the final destination for the proceeds, while shell companies will be used to facilitate the laundering process;

. legitimate businesses that generate large amounts of cash in small denominations, such as taverns, vending machine companies and restaurants, are useful to conceal illicit proceeds, as are legitimate businesses such as construction companies and waste industries that involve expensive machinery and complex contracting-out processes;

. a vast array of laundering techniques disguised as legitimate business transactions are used concurrent with companies to further legitimate illicit funds. Loans, fictitious sales revenue, and new investment capital are examples revealed in the cases.

F. Gold and Precious Gems

Both gold and gems provide the criminal launderer with a means to convert a large quantity of cash into a less conspicuous asset.[5] Due to their great value, a relatively small physical amount of these precious metals and gems can be easily purchased with a large amount of cash. A million dollars in twenties and fifties which would fill a suitcase can easily be converted into an envelope of cut precious gems. In turn, these assets can be converted back into cash almost anywhere in the world.

Police cases indicate:

. gold is usually purchased either in certificate form, coins, or wafers;

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[5] Other precious items such as art work, coins, stamps, etc. could be equally vulnerable to use by money launderers. However, none of our police cases identified these items.

. while chartered banks are the preeminent outlet for transacting in gold, launderers purchase gold from businesses other than banks including foreign currency exchanges and private bullion dealers. Cases revealed that large amounts of gold from legitimate private bullion dealers were usually made with certified cheques to avoid the suspicion inherent with purchasing gold with large amounts of cash;

. precious gems are purchased by the launderer in either set or unset form. When set as jewellery, precious gems can be purchased for cash without suspicion or the need for identification. Many legitimate jewellery retailers purchase jewellery from their customers, thus allowing the launderer to convert jewellery back into cash.

. gems may be taken out of the country and exchanged back into cash which, in turn, is repatriated to Canada;

. gems have the added advantage of possessing a value not easily determinable to the lay-person. Laundering schemes have involved invoices using inflated prices for the purchase or sale of these items.

G. Insurance Industry

While only a couple of cases identified insurance as a laundering vehicle, it is important to acknowledge the insurance industry as a potential vehicle once other institutions become more closed to exploitation by criminals. In particular, it is through its capacity as a financial investment intermediary that the insurance industry can be manipulated to launder the proceeds of crime. Cases have demonstrated that proceeds of crime have been invested in annuities and launderers have used insurance companies to facilitate the wire transferring of funds to the United States.

H. Automobile, Boat, Plane Dealerships

Police cases have indicated that many different types of big ticket items are purchased with the proceeds of crime. Expensive jewellery and homes have already been documented.

Three other items that deserve mention are automobiles, planes and boats. Cases demonstrate criminal launderers have purchased these vehicles, paying the full purchase price in cash denominations of twenty and fifty dollar bills. The significance of these items is that in addition to being purchased with the proceeds of crime, they can be used to smuggle drugs and illicit cash.

I. Legalized Gaming Facilities

The use of legal gaming facilities, such as gambling casinos and race tracks in money laundering has been well-documented in the United States. Gaming facilities tend to be "cash" businesses with all of the advantages to the launderer that this brings. In addition to denomination exchange, the main purpose of a gaming facility as a laundering vehicle is to provide criminal launderers with opportunities to claim the proceeds of crime as legitimate winnings.

Cases documented in Canada include the use of a race track for laundering and a case where a suspect claimed winnings from lotteries as the source of his proceeds. While the number of cases known to the police involving legalized gaming is limited, gaming in Canada is a multi-billion dollar industry. Bingos, carnivals, casinos and monte-carlo night events are all vulnerable to use by launderers.

J. White-Collar Professionals as Facilitators of Money Laundering

Cases reveal that white-collar professionals play an essential role in many money laundering schemes. Professionals working as real estate agents, stock brokers, financial advisors, accountants and lawyers provide services to criminals. In some cases the professionals may be acting innocently. However, in other cases it is clear that the desire to conduct business in a competitive market takes precedent over a willingness to refuse to be involved in suspicious (often cash) transactions.

Lawyers and accountants play a great part since their services can assist in on-going laundering schemes rather than facilitating the purchase for cash of specific commodities. Their expertise is useful in both the construction and maintenance of laundering operations. Lawyers play a critical and diverse role in the schemes and a summary of their involvement is presented below. Likewise, accountants are utilized by the criminals, however, their involvement tends to be less direct and consists mainly of bookkeeping for criminal launderers and advising them on business procedures to avoid suspicion by income tax officials.

Lawyers are most frequently used as part of large-scale money laundering operations, for the greater the quantity of cash generated by the criminal enterprise, the greater the need for increased sophistication in the laundering scheme. Lawyers perform two key roles. First, they can indirectly facilitate money laundering either wittingly or unwittingly through their legal expertise in areas that include tax advice, incorporation of companies domestically and offshore, and investment advice. Second, lawyers have been more directly involved in the laundering process by taking physical possession of illicit cash.

Police cases reveal lawyers perform the following tasks within the laundering process:

- act as nominees in the establishment of bank accounts, securities trading accounts, etc. This is perhaps the most essential service provided by lawyers to a criminal enterprise. Lawyers often hold funds for clients "in trust" and operate on the clients behalf directly with the financial or business institutions;
- incorporate shell and legitimate companies and in turn serve as director and/or resident officer;
- act as real estate agents and purchase real estate and other assets and hold these assets for the criminal enterprise;
- provide the credibility and professional status that removes suspicion from otherwise questionable transactions; and,
- physically handle the cash, including counting and sorting it, depositing it in bank accounts and physically carrying it to tax haven countries.

K. Transborder Movement of Illicit Proceeds

Based upon quantitative evidence derived from an analysis of Canadian police cases, it is estimated that approximately 80% of money laundering performed in Canada involves an international component. In other words, the majority of illicit money generated in Canada through illegal activities is either taken out of the country to launder, or proceeds of crime generated elsewhere in the world is brought into Canada for laundering. Transborder movement of illicit proceeds is an essential component of these schemes.

Money laundering techniques must be placed in the context of changes occurring within the global economic structure. Police cases indicate that the flow of illicit capital in the international economic forum occurs, most easily and efficiently, through established legitimate systems of exchange and distribution. In particular, the rise of an international, financial services-based, infrastructure intended to facilitate international trade, has benefited money launderers. It is precisely the use of this international financial infrastructure by enterprise criminals that facilitates the transborder movement of illicit funds, and hence international money laundering.

Canada's explicit recognition of, and participation in, this global economy is reflected in four recent developments which are both symptoms of and catalysts in this evolutionary process: The Canada-United States Free Trade Agreement, the establishment of international financial business centres within Canada, and the internationalization of the banking and securities industries.

The developments toward the liberalization of international trade and commerce, accompanied by decreased government regulation, have profound implications for money laundering. Under these evolving conditions, money launderers have easier access to legitimate processes and, operating under the guise of legitimate international businesses and financial institutions, have better means of avoiding detection.

The principle motive behind the transborder movement of illicit funds are the powers of obstruction such action holds: obstructing the means to ascertain the true source of the funds and obstructing subsequent financial investigations. In addition, in drug trafficking cases the funds may be required internationally for the purchase of narcotics and to finance the trafficking operation. Laundering the proceeds off-shore and then repatriating the profits to Canada provides funds for these purchases, while eventually allowing criminal enterprises to enjoy the fruits of their crimes in their own country.

Large scale international criminal organizations rely on a complex range of financial transactions involving essentially four stages:

i. the conversion of funds in Canada;
ii. the export of illicit funds;
iii. the deposit or investment of illicit funds off-shore; and
iv. the repatriation of funds to Canada.

Proceeds of crime, in cash, monetary or negotiable instruments, may be either physically carried by the criminal, wired or couriered off-shore. Prior to the exporting of illicit funds, cash is usually, but not always, converted into another form which makes its movement across the border as inconspicuous as possible.

The conversion takes place through, banks, trust companies, credit unions or foreign currency exchange houses--wherever small denominations can be exchanged for large denominations, negotiable instruments, U.S. currency, or other less cumbersome and suspicious forms of capital including gems. Conversion is usual since cash is heavy, bulky and subject to theft and suspicion. However, in some cases the cash is simply physically transported across the border. Criminals will carry the funds themselves or use their own couriers as well as professional armoured and express courier services to move the cash.

Police cases indicate:

- wire transfers of funds represent one of the most commonly used means to transport illicit funds internationally;
- institutions commonly used by launderers to transport illicit proceeds internationally include banking institutions, foreign currency exchange houses, brokerage firms and travel agencies;
- different countries have been explicitly implicated in laundering schemes involving Canada, however, the two most common destinations for illicit funds either leaving or entering Canada is the United States and tax haven countries;
- while the laundering vehicles in the United States are similar to those found in Canada, tax haven countries offer a host of services not available in either Canada or the United States. Cases reveal that the most popular laundering services in tax haven countries include: secret bank accounts, incorporation of shell companies, and foreign trusts;
- proceeds of crime enter Canada either as funds which were laundered off-shore and subsequently repatriated to Canada, or as illicit funds from another country that is using Canada as a laundering "haven". In this latter case, the funds must eventually be repatriated to their country of origin. The process of repatriation will ideally serve to legitimize the funds. This is often performed by repatriating the illicit funds as legitimate commercial transactions, such as loans, foreign investment, and sales revenue.

III. TOWARD AN INTEGRATED SOCIETAL EFFORT TO COMBAT MONEY LAUNDERING

Most of the efforts put forth by Canadian society to combat money laundering have been at the law enforcement level. Notwithstanding the obvious crucial importance of law enforcement, this body represents simply one component in the overall societal effort to combat money laundering.

This research identifies five areas that have a direct impact on the efforts to combat money laundering:

- law enforcement and the wider criminal justice system;
- private sector companies, management and employees;
- professional associations;
- industry and government regulators; and
- transborder regulators.

A. Law Enforcement and the Wider Criminal Justice System

1. Domestic Enforcement

Money laundering has only been an offence in Canada since January 1989. Law enforcement is increasingly becoming more aware of money laundering as a problem that must be addressed. The traditional preoccupation of law enforcement has been with combatting the illegal activities that generate the illicit proceeds of the criminal enterprise, with few resources concentrating on the illicit proceeds. However, a new law enforcement philosophy has emerged which recognizes that any attempts to combat drug trafficking and other organized criminal activities must incorporate the means to derive criminals of the motivation to remain in the business--their profits.

The efforts taken to combat money laundering vary with the level of the law enforcement body. The RCMP has made the greatest strides in this area, while there has generally been little effort to conduct proceeds of crime investigations among provincial and municipal police forces.

However, such efforts by law enforcement to stem money laundering will not realize its true potential unless they are performed in full co-operation with all other societal actors directly implicated in money laundering.

Critical law enforcement issues include:

- policing resources available to enable forces to initiate and carry through resource-intensive financial investigation;
- the process that is used to select financial or proceeds of crime investigators and the experience and training provided to these officers;
- the development or availability of expertise in forensic accounting and analytical work;
- the mechanisms in place and willingness of police forces to share intelligence and work together; and,
- the interaction between law enforcement, the private sector and regulatory agencies.

Lack of human resources, expertise, and the financial resources required for these lengthy and complex investigations have hampered the initiation and completion of money laundering investigations. In addition, the multi-jurisdictional character of many money laundering operations necessitates that all police forces in Canada (and internationally) work together to share intelligence and information pertinent to these resource intensive investigations. To date there is still a territoriality attached to police work that hinders the flow of information necessary for effective policing.

The provisions of Canada's recently enacted "proceeds of crime" legislation represents one of the most significant legal weapons in the arsenal of law enforcement to combat money laundering. However, its impact on deterring money laundering and the proliferation of enterprise criminal activities in Canada can not be fully determined at this point. The application of this legislation must be monitored in order to study how effectively it is being used across Canada. At present, there are too few concluded cases to provide an indication of the adequacy of this legislation. Moreover, there is no mechanism in place to monitor provincial usage of the legislation.

2. International Enforcement

Law enforcement has an international as well as a domestic role due to the large percentage of laundering cases that involve an international component. The globalization of business is only beginning to be accompanied by multilateral and/or bilateral law enforcement treaties to combat criminal activities which transcend national borders. Canada is increasingly working more closely with law enforcement agencies in other jurisdictions to share technology, training, and intelligence. However, as compared to the extent of the transborder flow of illicit and legitimate currency, the flow of law enforcement cooperation and collaboration internationally is still minimal. The same gaps that hamper enforcement between financial institutions within a country separate to an even greater extent the capacity of enforcement to effectively bridge the borders. Thus, while Canada has been active in developing an international dimension in order to be in a better position to combat laundering and other criminal activities, more must be done.

The following remain critical to a successful international enforcement strategy:

- continued negotiations for more mutual legal assistance treaties; and
- increasing co-operation between the relevant financial institution regulatory authorities to fully maximize the power of multilateral and bilateral treaties

3. Linking the Segments of the Criminal Justice System

This research emphasizes that the seemingly separate segments of the criminal justice system are in fact very much inter-connected. Resourcing one step in the criminal justice process puts a strain on the other stages. Policy makers and funding agencies must take this into account. For example, if policies increase the awareness of the regulatory agencies regarding money laundering, and encourage the banks to report "suspicious" transactions to the police, police resources must reflect this increase in activity. Likewise if there is an increase in the number of police involved in street-level enforcement and proceeds of crime investigations, this strengthening of the police resources will effect the number of prosecutors who will be required to keep up with the cases.

Therefore, decisions regarding the enhancement of the criminal justice system must recognize the impact that each activity has on the whole process. Much will depend on the resources made available and the political will provided to ensure a vigorous application of the new legislation. Traditional ways of thinking will have to be altered if investigations and prosecutions are to take full advantage of new legislative and enforcement tools.

B. Private Sector Initiatives

Industries identified as vulnerable to money laundering, in particular individual companies and employees, are at the front line of the fight against money laundering. As such, they constitute the greatest deterrence to the infiltration of illicit proceeds of crime into Canada's legitimate financial and business sectors. To date, in proportion to the extent of money laundering occurring in each of these sectors, the efforts put forth by these industries to combat money laundering is severely lacking. Leadership from the management and ownership of individual companies as well as professional associations in the form of education, policy and procedural development has been, at best, piecemeal, and at worst, entirely absent.

A partial answer is to be found in increasing the awareness and knowledge held by the financial and business communities regarding money laundering. For those industries which have taken the initiative to address this problem, efforts have concentrated on educating industry personnel who come in contact with money launderers as well as developing policies directed at laundering techniques associated with their respective industry. "Know your client" rules are presently one of the best initiatives offered by organizations to help combat money laundering.

The most positive steps in this area have been taken by the chartered banking community. Traditionally bank secrecy has been the rule. Only recently have governments and individual organizations put legislation, regulations, and policies in place to attempt to balance confidentiality concerns with law enforcement concerns.

Appreciation of the extent of laundering, education of industry personnel, and policy and procedural development must occur in all industries directly implicated in money laundering. This must be done at the industry level, carried out by both individual companies and professional associations. The position of individual companies within the laundering process necessitates that they and their industry representatives become a major conduit for both proactive and reactive efforts to combat money laundering.

Based on the conclusions of this research, a duplication of the United States' "currency transaction reporting" (CTR) system is not advocated. Adequate records, however, must be maintained and made accessible to law enforcement for a sufficient period of time for the purposes of money laundering investigations. Further, financial and business institutions must be encouraged or required to report "suspicious" transactions in order to provide the police with timely information without the intrusive, costly and inefficiency of the U.S. model.

C. Government Regulatory Bodies

As stated in the Enterprise Crime Study Report, it is the regulatory system of government which largely carries the burden for monitoring and recording business transactions, "therefore it could reasonably be assumed that regulatory agencies are well placed for identifying and tracing criminal proceeds" (Canada, Department of Justice, 1983, p. 26).

However, at present, provincial and federal government bodies are restricted in their ability to stem the flow of illicit funds in the industries they regulate. This inadequacy stems from their limited mandates which do not allow most regulatory bodies either the latitude or the resources to combat money laundering.

In general, regulatory bodies are mandated to protect the public, not to police them. Thus, regulations are aimed at the industry itself, not the individual customer--in this case the criminal money launderer. Issues related to the solvency of the regulated companies are of more concern than individual transactions. This is revealed in the type of information that is gathered and the form in which it is analyzed. For example, as far as proceeds of crime detection is concerned, regulatory bodies are handicapped by the fact that most regulation takes place on a macro level, and thus, individual transactions which represent money laundering, for the most part, will be beyond the scope of regulation.

The restrictions of this limited mandate are intensified by the fact that regulatory bodies have pursued very few initiatives to address the problem of money laundering. Despite these inherent weakness, regulatory bodies do offer the potential to be an essential component part in combatting money laundering. With adequate powers, mandate, training, and resources they could be in the position to reactively respond to facilitate the efforts of law enforcement to target money launderers. Further, these regulatory bodies can play a proactive role by incorporating provisions to prevent money laundering into their compliance functions.

A significant "gap" exists in that the currency exchange houses are virtually unregulated. In the spring of 1990 the federal government proposed legislation to require a greater uniformity of record keeping across financial institutions (Austen, March 21, 1990, p. F1). This legislation should serve to make currency exchange houses more accountable and possibly hinder the operation of those specific operations that encourage criminal clients.

D. Professional Associations

Across the financial and business sectors that have been studied in this report, there are examples of professional associations that have been particularly active in combatting money laundering. The Canadian Bankers Association is one such organization. In addition to detailed policies, procedures, training sessions, a money laundering task force, the official journal, Canadian Banker, has featured money laundering as a lead article to increase awareness among the members. The Canadian Bankers Association works in partnership with the other regulatory bodies that control the banking industry.

The professional associations that regulate the operation of lawyers across Canada provide a less favourable comparison. Police cases indicate that lawyers are instrumental in many of the most significant money laundering schemes. The self-regulatory mechanisms set-up to regulate this professional group do not seem adequate to the task.

In some provinces the law societies are understaffed and underpaid. However, in addition to resource problems, the main difficulty stems from the fact that the mandate of these societies does not include aggressive, proactive supervision of the legal profession. The knowledge, status and credibility of lawyers are seen as valuable assets in the laundering of money.

In some cases the lawyers merely facilitated the laundering scheme. In other cases the lawyer was the launderer--selling his services to his criminal client. Self-regulation may not be adequate for a profession that has the powers of this particular group.

E. Transborder Regulators

Combatting money laundering that incorporates international movements of funds must involves two basic components:

- the crucial involvement of those government agencies involved in regulating the movement of funds and individuals across national borders; and
- the attempts to combat money laundering through international initiatives via cooperation with foreign governments and international institutions.

There are a number of Canadian government agencies directly and indirectly involved in the regulation of transborder movements of money. When faced with the transborder movement of the proceeds of crime into and out of Canada, the most important of these bodies are Revenue Canada, Customs and Excise (Canada Customs), Department of Employment and Immigration (Immigration Canada), and Investment Canada.

However, in general, these government agencies have been very restricted in the efforts to combat money laundering through the transborder movement of illicit funds. While

Canada Customs has taken some initiative in this area, at present this agency is virtually impotent to effectively combat this problem. This stems from the fact that at present there are no Canadian laws hindering the movement of cash across Canadian borders. As such, there is an absence of regulations requiring cash above a certain amount to be declared to Canada Customs upon leaving or entering this country. Thus, Canada Customs has little power to seize cash that may appear to be suspicious. Unlike other regulatory bodies which possess the power but not the resources to facilitate law enforcement, Canada Customs possess the resources but not the legislative powers.

Immigration officers are involved in circumstances where illicit funds enter the country with an immigrant or visitor. Unlike Canada Customs, Immigration officers have the power to ask potential immigrants or visitors how much money they are bringing into Canada, and to evaluate the source of an immigrant's money for investment in Canada. However, despite these powers, it is rare for the source of an immigrant's money to be scrutinized by Immigration officials. In addition, there are no mechanisms for identifying what are and are not legitimate funds or for verifying net worth statements. While Immigration officers are empowered to see the money, they possess limited powers of search and seizure. Immigration officials also have restricted direct access to valuable intelligence data, such as criminal record information.

Proceeds of crime entering Canada will often do so under the guise of legitimate investment capital. The regulation of foreign investment in this country is the responsibility of the federal government through Investment Canada. However, there exists a general lack of regulatory scrutiny by

Investment Canada to identify illicit money. In neither the notification or application process are questions asked about the source of the funds being invested. Applicants are asked to supply only basic information, and no background check is performed to verify the accuracy of the information. Further, law enforcement, either nationally or internationally, are not routinely asked to perform checks on the applicants investing in Canada.

In order to combat illicit money crossing Canada's border it is integral that these three bodies be given the power, the mandate and the resources to combat transborder money laundering. Among other things this must include:

- enacting laws regulating the movement of currency across the Canadian borders;
- greater scrutiny of the source of foreign investment.
- additional resources to allow for adequate investigations into the source of investment capital.

IV. CONCLUSION

This research on money laundering in Canada demonstrates the significant weaknesses inherent in the overall efforts to combat money laundering. Existing efforts put forth thus far have been fractionalized. Future efforts must strive for a coordinated effort by all those bodies being used by money launderers and initiatives must recognize the importance of prevention and awareness efforts, in addition to enforcement and regulation.

This must translate into formal and informal cooperation not only between industry bodies, regulatory bodies and law enforcement within one area of the financial or business sector, but bridged across different sectors. Cooperation must consist of a sharing of experiences, expertise, prevention resources, enforcement intelligence and technology.

This research study highlights how many different laundering vehicles there are available to criminals. It is therefore important that officials creating policy and legislation recognize that launderers will switch from one vehicle to another when the risks in one sector increase, disproportional to the risks imposed in other financial or business sectors. Targeting only select sectors of the financial or business community, to the exclusion of other sectors, is therefore futile. When one institution is shut off to launderers, they will simply frequent a sector which is more accessible. Likewise, when one country increases the risks to money launderers, the criminals will look toward more accommodating countries. This phenomenon highlights the need for co-operative efforts to combat money laundering which transcends industry lines and national boundaries.

In addition to the legislative, regulatory, and resource requirements, greater co-operation could be fostered by means of conferences, formal working groups that function both within and between the separate industries, and international forums that allow for an exchange of experiences for all affected individuals and organizations.

INTRODUCTION

I. RESEARCH OBJECTIVES

This study is designed to provide an empirical analysis of the salient and common characteristics of money laundering cases and to examine the vulnerability of Canadian business and financial institutions to laundering operations. Further, it identifies those elements in Canadian society which are directly implicated in the effort to reduce and prevent the infiltration of illicit proceeds into legitimate sectors of the Canadian economy.

Narcotics trafficking and other enterprise crime activities in Canada generate billions of dollars annually.[1] Cash is the universally accepted mode of payment in this underground economy and, as such, illicit profits take the form of currency. Consequently, organized criminals, in particular drug traffickers, accumulate cumbersome amounts of cash which leaves them highly susceptible to investigation.

Despite an increasing interest in this area, qualitative and quantitative information on money laundering in Canada is limited. Traditionally, law enforcement efforts have focused on the illegal activities of the criminal enterprise, with few resources targeting the illicit proceeds. However, worldwide, police forces and financial institutions are becoming more aware of the need to enhance their skills at detecting and deterring money launderers. As the chairman of the President's Commission on Organized Crime in the United States commented:

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[1] There is no verifiable method for determining the size of the illicit economy. Estimated figures in this area of illicit proceeds, however carefully calculated, should be used with caution. They are essentially guesses. Once stated, these estimates take on a reality they do not deserve. For example, estimates of drug trafficking proceeds for only the United States and Europe range from $30 billion (U.S.) to $300 billion (U.S.). Subtracting 50-70% for the costs of conducting this illicit business, the estimated amounts of money being laundered range from $15 billion to $85 billion (U.S.) annually.

> "money laundering is the lifeblood of organized crime... without the ability to freely utilize its illgotten gains, the underworld will have been dealt a crippling blow." (United States, President's Commission of Organized Crime, 1984, p.7)

A. Definition of Money Laundering

For criminals to derive the maximum benefit from the fruits of their "business," the illegally-acquired profits must be transformed to appear to be derived from legitimate sources. Money laundering is the popularly accepted term to describe the activity of legitimizing illegally-earned proceeds. Laundering is thus a process rather than an specific, isolated act and can best be understood as occurring with varying degrees of thoroughness. There are three main stages in the money laundering process that form a continuum:

- Illicit cash is converted to a less suspicious form of currency or asset;
- Illicit cash is converted to an alternate form in a manner that conceals its origin, ownership or other suspicious factors (Bowie, 1988b);
- Illicit cash is converted into an alternate form, the true source or ownership of the funds is concealed, and a legitimate source is created.

The first two stages above do not provide a legitimate source for the illegitimate funds. Therefore, if the police become suspicious of an individual's activities, the individual is left vulnerable to investigation. The final stage offers greater protection from investigation by creating the perception of a legitimate source for the illicit funds.

The more complete process conforms to the description of the money laundering concept used by the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances[2] which identifies the three crucial elements of the laundering process:

- conversion of illicit cash to another asset;
- concealment of the true source or ownership of illegally-acquired proceeds; and,
- creation of the perception of a legitimate source.

This definition has served as a guide in this present study.[3] Yet, regardless of how thorough the laundering process adopted by a criminal individual or enterprise, it should also be recognized that all investment of criminal proceeds results ultimately in the flow of illicit money into the legitimate business and financial market. Corruption of officials, unfair competition, and fear of criminal monopolization of businesses are relevant issues to consider alongside money laundering. And for these reasons, weak laundering schemes as well as the more sophisticated, are examined in this report.

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[2] Article 3, paragraph 1(b) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, E/CONF.82/15 of 19 December 1988

[3] This description is compatible with the definition of money laundering used by the U.S. Department of Justice. See Clifford Karchmer, Illegal Money Laundering: A Strategy and Resource Guide for Law Enforcement Agencies, 1988, p. viii.

II. RESEARCH METHODOLOGY

This study had two separate research phases. First, over 150 police cases involving the infiltration of illicit funds into the legitimate economy and/or money laundering were identified and studied. The majority of these cases were investigated and tried between 1975 and 1990.

The understanding of laundering schemes gained from the police case analyses was used to ground the second phase of the research - the identification and analysis of financial and business institutions, professional organizations, and regulatory or enforcement agencies, directly implicated in the effort to combat money laundering in this country.

A. Phase I: Analysis of Police Cases

This task involved an intensive research effort. Prior to January 1989, when money laundering became a specific offence in Canada, there did not exist a readily identifiable body of money laundering cases. Therefore, the money laundering aspect of criminal activity had to be retrieved and deduced from existing police cases concerning

financial investigations. Frequently, the researchers had to consult with police investigators who had been assigned to the case, in order to establish what had happened to the funds and to obtain more specific details of the cases.[4]

Police cases that involved the infiltration of illicit money into the Canadian business, financial or legal community, and cases where considerable profits were generated over a continuing period of time were examined.[5] From these cases, a smaller number were identified where there had been an attempt to conceal the ownership of the illicit proceeds and in some of these police cases an attempt had been made to create the perception of a legitimate source for the illicit proceeds. Concurrently, a literature review on money laundering was conducted to supplement and give context to the case information.

The police cases provided information concerning:

- **which sectors of the economy were used by money launderers[6];**

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[4] Because some of the cases have not yet come to trial, specific facts, names, dates and locations had to be omitted from this report.

[5] Police cases were supplied by the RCMP, large metropolitan police forces, and provincial police. An attempt was made to gather as many cases involving money laundering as was possible. However, no claim is made that these cases represent a total sample. The cases identified reflect the significance of the case to the police, the involvements of particular officers, and the visibility of the financial aspects of the specific criminal cases.

[6] The absence of police cases involving a particular sector or institution does not prove that criminals are not making use of those facilities--only that such involvement has not yet come to the attention of the police. For this reason, the report also mentions institutions which appear to be potentially vulnerable.

- which institutions within these sectors were most vulnerable;
- which services offered by the various institutions were most valuable to the launderers;
- how the services were used in laundering schemes;
- what "techniques" were used by launderers to manipulate the institutions and services for laundering purposes;
- which industry personnel came into contact with the launderers; and,
- what additional services or individuals were used to facilitate money laundering.

The police cases demonstrated that methods of money laundering are extremely diverse. Indeed, the vast majority of legitimate business and financial transactions can be used as laundering vehicles. The analysis of these cases revealed six sectors within Canada's business and financial community which are traditionally used by criminal enterprises directly in their laundering activities or to facilitate their laundering schemes. They are:

- deposit-taking institutions;
- currency exchange houses;
- the securities market;
- real estate;
- the incorporation and operation of businesses; and
- gold and precious gems.

In addition, the following sectors were identified as having a potential to be used in money laundering schemes:

- businesses selling high price items such a automobiles, boats, and planes;
- legalized gaming facilities; and

- the insurance industry.

A number of these "vulnerable" sectors are often used in combination to produce a network of laundering vehicles within extremely complex schemes. The most sophisticated schemes were usually facilitated by a cadre of witting and unwitting professionals, such as lawyers and accountants.

These professionals and others, have the expertise and the credibility to assist money launderers. Indeed, professionals are valued facilitators and money laundering has become an illegal area of specialization within certain professional categories.

The internationalization of criminal enterprises, and the concomitant transborder movement of illicit proceeds within a rapidly globalizing world economy is the final, salient feature of money laundering.

B. Phase II: Identification and Analysis of Industry Bodies, Regulatory Agencies, Law Enforcement and Legislation Relevant to Money Laundering

Phase II involved an analysis of agencies, organizations or key individual positions relevant to each financial or business institution identified as vulnerable to money laundering.

The police case analysis from Phase I was juxtaposed with this analysis, to determine the strengths and/or weaknesses of these agencies, industry, or professional groups to detect, prevent, or deter money laundering.

In most cases, five layers of regulation or control were examined:

- private sector companies
- professional associations and self-regulatory bodies;
- provincial and federal government regulatory agencies;
- legislative initiatives; and
- international cooperation.

In each instance, researchers examined the mandate, general responsibilities, mechanisms in place to enforce the regulatory responsibilities, and the powers available to the function. Particular attention was paid to discrepancies between the agency's mandate, powers, and activities[7].

Law enforcement has long been considered the main defence against money laundering. However, it is more accurate to see the police as only one component of a much larger network of regulatory agencies, management policies, and individual initiatives aimed at curtailing money laundering. Efforts put forth by law enforcement to combat money laundering will not reach its full potential unless they are performed in full coordination with those actors directly implicated in the battle against money laundering. This research therefore studied each of the actors from whom law enforcement requires cooperation and assistance to deter money laundering. This report follows the following outline:

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[7] A similar focus on activity, mandate, and power, had proven useful in examining the powers assigned to federal law enforcement agencies. Ministry of the Solicitor General, Canada, 1986 Federal Law Enforcement Under Review: Report of the Findings. Report by Tonita Murray.

- Chapters 1-6 - Vulnerable Industries

  Industries are at the "front line" in the fight against money laundering, and thus the greatest deterrence to the infiltration of illicit funds into Canada's legitimate financial and business sectors may be at this point. Central to the effort to combat money laundering at this level are those agencies empowered to regulate the industry, and, as such the government regulatory body specific to a respective industry is also analyzed;

- Chapter 7 - International Aspects of Money Laundering

  Throughout this research, the global nature of money laundering is acknowledged and the ensuing consequences emphasized. International responses to money laundering will play an increasingly important role. The main international mechanisms and forums are also examined in this chapter;

- Chapter 8 - While Collar Professionals

  Both in Canada and off-shore, nominees, shell companies, numerous bank accounts, stocks, and real estate are used extensively as means to obstruct any trail leading from the laundering vehicle to the beneficial owner. The skills of lawyers and accountants are essential to many of these schemes;

- Chapter 9 - Money Laundering and Law Enforcement

  The recently passed Proceeds of Crime legislation has provided Canadian law enforcement with a powerful tool to use against enterprise criminals and drug traffickers. However, new skills, new technology, new policies and possibly new working relationships must now be developed to enable full use of this new legislation;

- Chapter 10 - Summary of Findings and Conclusion

CHAPTER ONE

MONEY LAUNDERING AND DEPOSIT-TAKING INSTITUTIONS IN CANADA

I. INTRODUCTION

Deposit-taking institutions[1] are the common thread running through the myriad of money laundering schemes available to criminal enterprises. Police cases indicate that deposit-taking institutions, and in particular chartered banks, are used to launder more money in Canada than all other laundering vehicles combined. Any analysis of money laundering in Canada must, therefore, begin with an examination of the critical role that banks and similar institutions play in this process.

As the nucleus of the laundering process, deposit-taking institutions are also integral to facilitating law enforcement in combatting this problem. It is through these institutions that a paper trail of transactions can be compiled and analyzed. If adequate records are in place, these deposit-taking institutions can act as a "point of convergence" for the criminal to be seen in person, or on paper, in order to be connected to the illicit funds.

Banking records and banking intelligence can provide three types of information to the police--information to initiate a financial investigation, information to assist in an ongoing police investigation and evidence required for the successful prosecution of criminals. Different kinds of records are required for these separate objectives and all are critical to combatting money laundering.

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[1] For the purposes of this report, the definition of a deposit-taking institution is derived from that used by the Federal Office of the Superintendent of Financial Institutions and is limited to Schedule "A" and "B" chartered banks, trust companies, and loan investment companies and co-operative credit societies (Office of the Superintendent of Financial Institutions 1987, pp.3-4).

Deposit-taking institutions can also take an active role in discouraging launderers from using their facilities. As Helen Sinclair, President of the Canadian Bankers' Association stated:

> "Fighting money laundering is the most meaningful contribution that the banks can make to the war on drugs ... Effective anti-money laundering measures make it tougher for criminals to get their dirty money into the financial system. Criminals, of course, want to get their cash--the currency of drugs and crime--into the financial system--into bank accounts or securities or annuities or other `legitimate' liquid assets--so that they can get some use out of it."[2]

A. Structure of the Deposit-taking Industry

Deposit-taking institutions in Canada cover a wide spectrum of commercial and financial enterprises. A chartered bank in Canada can operate as either a Schedule "1" or "2" bank.

Schedule "1" banks can be divided into two categories. The first category includes the domestic national "big five" banks:

- The Canadian Imperial Bank of Commerce;
- The Bank of Montreal;

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[2] Presentation titled, "Dirty Business: Money Laundering and the War on Drugs" made by Helen Sinclair, President of the Canadian Bankers' Association, to The Canadian Club, February 19, 1990.

- The Bank of Nova Scotia;
- The Royal Bank of Canada; and
- The Toronto Dominion Bank.

These institutions provide the most comprehensive range of customer services--locally, nationally, and internationally. They dominate the deposit-taking industry in Canada, and are also considered a major force in the international banking community.

The second category of domestic chartered banks includes the smaller national or regional banks, such as the National Bank of Canada, the Laurentian Bank, and the Canadian Western Bank. These banks usually do not operate branches in all provinces or overseas. However, they provide the full range of services, including foreign remittances and other international transactions.

Schedule "2" chartered banks are the Canadian subsidiaries of foreign banks. While these subsidiary chartered banks deal mainly with commercial customers, there are a certain number which provide retail or consumer banking as a part of their business. There are approximately 58 of these institutions in Canada.

Trust companies are the second level of deposit-taking institutions in Canada. They operate nationally as well as regionally, and offer deposit accounts and cheque writing services. While the national trust companies rival the schedule "1" banks in services, in general trust companies do not have any apparatus for international transactions.

Co-operative deposit-taking institutions, such as credit unions and caisse populaires, are the third level of financial institutions. These institutions are predominately multiple or single-branch operations at the city or municipal level. Credit unions are usually incorporated by a group of people sharing similar characteristics, such as ethnic origin, occupation, or municipal residence. There are over 1,350 officially registered credit unions and caisse populaires in Canada (Canadian Co-operative Credit Society, p. 7).

B. Money Laundering Objectives and Deposit-Taking Institutions

Willie Sutton, one of America's most prolific bank robbers, was once asked why he robbed banks and reportedly replied with an incredulous look, "That's where the money is" (Newcomb 1986, p.45). Because banks are "where the money is," they represent the natural vehicle for money laundering. Thus, ironically, many of today's criminal enterprises are not so concerned with forcibly withdrawing money from banks, as with depositing it.

The objective of laundering illegal funds requires that cash be converted to an instrument offering more secretive and convenient features. The alternative form should facilitate free and easy use of the ill-gotten funds and be conducive to further laundering through other mechanisms. Banking institutions satisfy the inherent objective of the laundering process by providing the financial intermediary services of converting cash into other forms of assets desired by launderers. Through services such as electronic wire transfers, they also facilitate the movement of these proceeds.

Prior to the proclamation of Bill C-61, the "proceeds of crime" legislation (S.C. 1988, c. 51) in January 1989, illicit money deposited in bank accounts was immune to seizure and forfeiture by law enforcement. This precedent was set by a case involving Luis Pinto, a U.S. drug trafficker--a precedent which helped to propel Canada into a new era of anti-drug profiteering laws.[3]

Within the context of the global drug money network, Canadian banks possess qualities which make them particularly susceptible to money laundering by foreign criminal enterprises. Canadian banks have an international reputation for efficiency based on their sophisticated computer and fast clearing systems (Toronto Star Jan. 13, 1984, p. B9). In addition, they have traditionally adhered to banker-customer confidentiality which has served in the past to assist criminal launderers.

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[3] After Pinto was convicted of drug trafficking offenses (and in the process admitted to laundering approximately $40 million in U.S. funds), it was discovered he maintained an account with a branch of the Royal Bank in Montreal. The account was in the name of Pinto's relatives, but RCMP officials working with the FBI, had evidence that $400,000 in the account had been obtained from drug trafficking. Using Section 312 of the Criminal Code, the RCMP obtained a warrant to seize the funds, but were thwarted by bank officials who claimed that money on deposit - represented by a credit in a bank account - is an intangible asset, and cannot be seized. The RCMP forced the issue all the way to the Supreme Court. In May, 1985, the Supreme Court upheld earlier rulings by the Quebec Superior Court and the Quebec Court of Appeal, both of which agreed that bank credits are not tangible assets and therefore cannot be seized under this section of the Criminal Code. (Globe and Mail "Court Denies Mounties Power to Seize Assets", May 14, 1985, p. 4).

The geographical proximity of Canada to the United States, the single largest market for illegal drugs in the world, makes Canadian banking institutions especially attractive for illicit money. Criminal enterprises based south of the border use Canadian banks because of the obtrusiveness of trans-border movements of illicit money, the difficulties posed to law enforcement by investigations in foreign jurisdictions, and possibly a sense that without the U.S. style mandatory currency transaction reporting requirements of Canadian banks may be more inviting.[4]

The extensive international branch network of Canadian banks, plus their ability to transfer funds across national boundaries also makes Canadian banks very popular with money launderers (Lamphier 1986, p.48). Canadian banks maintain over 200 branches in foreign countries. A significant number of these branches are in tax haven countries in the Caribbean basin where Canadian banks are a dominant force in the financial industry.

As a result, not only has illicit money deposited in Canadian branches been moved to branches in tax havens, but drug money belonging to traffickers in those locales has been directly deposited in branches of Canadian banks (Bowie 1988a, p. 26).

In summary, banks and similar institutions provide the services for money launderers to conceal and convert illicit money. They can exchange cash for a more convenient and less conspicuous instrument and provide a medium through which to reach other laundering vehicles--all the while maintaining the veil of secrecy of ownership. Canadian deposit-taking institutions, in particular, provide this and more. They offer an efficient banking service that is enhanced by an extensive international network of branches.

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[4] This perception ignores the extensive records that are kept by the banks, and police cases did not include any examples where record keeping was cited as a reason for using Canadian banks. The argument is made however in "Loopholes in Canadian Bank Law bring traffickers money from the U.S.," Narcotics Control Digest, October 30, 1985, p. 5 and "Stem money-laundering, Canada told." Ottawa Citizen. February 9, 1990, p. A14.

II. POLICE CASE ANALYSIS

Any service offered by a bank can potentially be used for the purposes of money laundering. The services abused by launderers described herein are not meant to be exhaustive nor are they mutually exclusive. Police cases demonstrate that banks not only serve as the ultimate destination of illicit funds, they just as commonly serve as the integral link in a chain of laundering vehicles.

In the vast majority of cases the deposit-taking institution was "used" by the launderer. In a few cases, bank officials were directly implicated. As has been shown with other "professional" groups, bankers may naively but innocently assist launderers, or they may collude with criminals and enter into the laundering scheme.

A. Type of Institution Favoured

While all types of Canadian deposit-taking institutions are used by money launderers, police cases indicate that the majority of laundering is performed at chartered banks.[5] This may have little to do with the security and enforcement within the different types of institutions, and more to do with the domination of the deposit-taking industry by chartered banks and the range of services that are offered.

Chartered banks in Canada, in particular the "big five", dominate the industry and thus, like legitimate customers, money launderers tend to gravitate to these institutions. Chartered banks also offer a greater range of services that are conducive to money laundering, especially services that involve international movements of money such as electronic wire transfers. Moreover, the international connections of the "big five" banks, for the most part, are not replicated at the trust company or credit union level.

However, this does not preclude trust companies and credit unions from being used as laundering vehicles. Basic banking services which attract launderers such as deposits, purchase of monetary instruments, currency and denomination exchanges are not exclusive to chartered banks. In addition, as security tightens at the major chartered banks, there may be a tendency for launderers to move to institutions with less sophisticated security measures.

Some credit unions are particularly attractive to money launderers because they operate from within specific ethnic communities which ordinarily deal on a cash basis, no matter what the size of the transaction. This provides an effective cover for a criminal launderer. In addition, a "bond of association" forms the basis for some credit unions. The result is a much closer relationship between the institution and the customer, making it easier, with cooperation from the institution, for a launderer, from within that community, to circumvent detection by law enforcement. However, without banker collusion, that familiarity may serve to create an ideal "know your customer" environment in which strangers/outsiders would be viewed suspiciously.

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[5] Of note, however, the most recent police cases suggest that the frequency of the "big five" chartered banks being used as laundered vehicles has decreased, relative to Schedule "B" banks, trust companies and credit unions. It is too early to determine whether this is a new trend or merely reflective of a few unique cases.

B. Types of Services Favoured

There are numerous services offered by a deposit-taking institution which are used by launderers. One particular service can be used exclusively, or more commonly, a host of services are used concurrently. The following section will illustrate police cases relating to:

- deposits
- immediate withdrawals
- negotiable instruments
- electronic wire transfers
- denomination exchange
- conversion to U.S. currency
- safety deposit boxes
- bank loans
- bank acting on behalf of a customer
- banker's discretion.

1. Deposits

While the deposit of money into a bank account is not absolutely necessary to gain access to the services of a bank, many police cases reveal that the first step in the laundering process is often a direct deposit. Its role in the laundering process cannot be over-emphasized.

The deposit represents the entry point for illicit money into the legitimate financial and business system and becomes the link between the criminal investor and any further laundering activities. Thus, it is at this point that one of the greatest deterrents to money laundering should be erected.

An analysis of police cases reveal some common characteristics of direct deposits in the laundering process:

i. Suspicious Deposits

Some launderers appear to have a penchant for stereotypes in that funds to be deposited are brought into a branch in the most suspicious ways, such as large amounts of cash in small denominations carried in bags, boxes or suitcases:

> On June 26, 1986, an American drug trafficker deposited $810,000 (US) at a branch of the Bank of British Columbia in Vancouver. The money was carried into the branch in three cardboard boxes in the following denominations:
>
> $ 20 x 25,700 = $514,000
> $100 x 2,250 = 225,000
> $ 50 x 1,300 = 65,000
> $ 10 x 200 = 2,000
>
> Total $806,000
>
> He also added $4,000 dollars from his pants pocket to bring the total deposit to $810,000 (Canada, RCMP case files).

ii. Use of Money Couriers ("Smurfs")

The deposit of illicit cash into banking institutions often involves the employment of "smurfs," that is, money couriers of innocuous appearance who can best avoid suspicion:

> Gary Hendin, a launderer for a Canadian drug trafficking organization employed, the 15 year old son of one of his law office workers to deliver parcels full of money to the bank. In all, the boy carted more than $250,000 in cash to the bank on his bicycle. Police say the bank manager should have become suspicious when the boy walked in with bags of small bills. The bank says not (Lamphier 1986, p. 31).

Launderers often use a number of smurfs to make a large number of relatively small transactions (commonly referred to as "structuring"). This is performed in order to avoid the scrutiny applied to large cash transactions.

iii. Use of False Fronts to Open Accounts

In addition to, or in lieu of smurfs, sophisticated criminals will utilize "fronts" when opening accounts in which deposits of illicit funds are to be made or transactions conducted. A corporate account can be opened in the name of a shell or legitimate company which normally generates a high volume of cash in small denominations, such as retail stores, night clubs, car washes and movie theatres. Criminal ownership can be further concealed by having lawyers and/or nominees posing as directors set up these accounts:

> Stephen Paul Pakozdy, operated a business called Pine Village Quilts Ltd. to legitimize bank deposits which were derived from drug trafficking in Edmonton. Cash would be transported into local bank branches and deposited into the companies' account.
>
> Investigators were able to identify approximately $1,000,000 in criminal profits generated by Pakozdy,

> much of which was claimed as revenue from the business. Investigators found that the sales records of Pine Village Quilts did not reflect the large cash deposits made by Pakozdy (Canada, RCMP case files).

iv. Use of Indirect Deposit Services

Deposits of illicit funds can easily be made into an account with a depositor never having to confront a teller. As the following police case demonstrates, computerized banking facilities can be used to this end:

> A small-time drug trafficker operating out of Vancouver had his wholesalers deposit money into his account using the multi-branch or "interac" computerized bank tellers. He then withdrew the money to purchase money orders in U.S. funds. These money orders were subsequently sent to South America to purchase drugs or to Greece to be repatriated at a later date (Canada, RCMP case files).

The advantage of this method is that the launderer can bypass any potential scrutiny of banking officials, and deposits can be made into any number of accounts throughout the country. A variation on this route would be to utilize overnight deposit facilities.

2. Immediate Withdrawals

In many cases, once the deposit has been made the launderer will immediately withdraw the money, usually in the form of a bank draft, cashier's cheque, or other negotiable instrument:

> On December 3, 1986, a Montreal area man made his first cash deposit from the proceeds of drug trafficking. Over the next three weeks, he deposited $3.7 million, From November 1987 to February 1988, he made 20 deposits totalling $8 million. In every instance, right after depositing the money, the man immediately

> withdrew it in the form of a bank draft signed by the assistant manager of the deposit-taking institution. The drafts were later deposited in banks in Switzerland, Italy and Spain (Marsden, May 1988, p. 3).

3. Negotiable Instruments

Negotiable instruments such as bank drafts, cashier's cheques, certified cheques and money orders represent an effective laundering tool. They can be purchased directly with illicit cash or drawn against an account. They are a convenient and inconspicuous means to physically move large amounts of funds. They can easily be transported, and are readily cashable at most financial institutions:

> A money launderer for a major drug trafficking organization laundered over $4 million (CDN) through a Vancouver branch of the Bank of Credit and Commerce. Between November 1986 and July 1987 nine bank drafts were purchased by the launderer and/or his smurfs putting the average value of each bank draft over $450,000. The majority of these bank drafts would be cashed at a branch of the Bank National de Paris in Luxembourg (Canada, RCMP case files).

Bank drafts purchased in Canada are not confined to domestic currency. In fact, cases reveal that most bank drafts drawn in Canada are in U.S. funds:

> A drug trafficker laundered almost $700,000(CDN) by purchasing bank drafts in US funds. The bank drafts were then sent to Los Angeles (Canada, RCMP case files).

The rationale behind the currency exchange of the negotiable instrument is to facilitate their cashing in the U.S. or other countries.

4. Electronic Wire Transfers

The electronic wire transfer represents one of the most effective and popular means to launder the proceeds of crime through financial institutions in Canada and abroad because money can be easily transferred to a different branch, a different bank or even a different country. Wiring funds is tantamount to sending cash instantly, and funds that are wired do not have to wait for collection, as do personal cheques:

> Prior to investing in other laundering vehicles, such as real estate or securities, a drug trafficker moved over $250,000, through a series of Canadian bank branches via wire transfers (Canada, RCMP case files).

The U.S. Federal Reserve has estimated that one trillion (U.S.) dollars are transferred internationally each business day.[6] With such large sums of money involved, individual transfers, no matter what size, cause little suspicion.

Increasingly, electronic wire transfers are utilized for the express purpose of moving illicit money outside the country of origin:

> From a branch of the Bank of Tokyo (Canada) in Vancouver, a launderer for an international drug trafficking ring wire transferred funds to three different banks in Japan. Part of the money then went to Thailand to purchase heroin. In all $302,000 out of $563,000 identified by police as the proceeds of crime was laundered through this route (Canada, RCMP case files).

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[6] United States, Senator Kerry Report: Drug Money Laundering, Banks and Foreign Policy, A Report on Anti-Money Laundering Law Enforcement and Policy, P. 52, Released Feb./90.

A further advantage of electronic wire transfers is that they can be performed in the name of the bank itself and are thus difficult to trace to the launderer. This can be accomplished easily by using banks to electronic wire transfer funds between their own and correspondent accounts between different branches and different banks.[7] According to Karchmer:

> "Use of this mode usually requires the complicity of a bank official who allows the transfer of personal funds to be handled, and to appear, as though the transfers actually settled bank rather than personal business.
>
> It is extremely difficult, if not virtually impossible, to detect laundering that is carried out in this manner in the absence of other leads because such transfers are almost indistinguishable from bank-to-bank transactions carried out for purely legitimate reasons" (1988, p. 35).

5. Denomination Exchange

Because the cash generated from drug trafficking is generally in small denominations--usually no larger than $50 or $100 bills, the launderer will often exchange this cash for less bulky and inconspicuous denominations.[8] Along with other financial and business institutions, deposit-taking institutions are used for this procedure:

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[7] A correspondent bank is defined as "A bank in one country which acts so required for a bank in another country" (F.E. Perry. A Dictionary of Banking. Plymouth: MacDonald and Evans, 1979, p. 54.). Correspondent banks often keep accounts with one another (Gart 1989, p. 256).

[8] This process of denomination exchange is sometimes referred to as "refining" dirty money. See Bowie, February 1988, p.3.

> A Winnipeg resident owned a local car dealership and was also suspected of being involved in the local drug trade. He was observed travelling from bank to bank with known drug traffickers. Small denominations of cash were converted to larger bills which he used to purchase houses, cars and race horses (Canada, RCMP case files).

6. Conversion into U.S. Currency

Changing the currency of illicit money has been identified as an important step in the laundering process. Bank institutions are popular vehicles for this, as are currency exchange houses.[9] Illicit Canadian cash in small denominations will be exchanged for U.S. currency in either large denominations or negotiable instruments payable in U.S. funds:

> A lawyer was used by drug traffickers to launder cash through local banks. The predominant service was the exchange of Canadian to American cash. The lawyer's role was to take Canadian cash from the dealers to the Bank of Credit and Commerce in Vancouver. The cash would then be exchanged for American currency. Between March 1985 and July 1987, the lawyer exchanged "a total of $3.1 million from Canadian currency into U.S. funds on 18 occasions, with amounts ranging from $56,000 to $396,000" (Hall, October 11, 1989, p. A9).

A variation of this route is to deposit Canadian funds into U.S. dollar accounts or purchase U.S. Treasury Bills.

7. Safety Deposit Boxes

Safety deposit boxes have been used to hide cash generated from illegal activities, as well as assets such as precious gems and security certificates purchased with illicit money:

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[9] For a complete examination of currency exchange, see Chapter Three on Currency Exchange Houses.

> Shortly after arriving in Canada from the United States an American drug trafficker, under an alias rented a safety deposit box at a Canadian bank to store 426 gold coins valued at $210,000 (Canada, RCMP case files).

While the use of a safety deposit box does not satisfy the objectives of money laundering, the storage function has been cited as being used within the laundering process. One case in the United states involved the use of the bank vault:

> Four bank vault employees set up a false business account, made up false bank statements for the account, and arranged to have the illicit funds delivered to the central cash vault by an armoured carrier. The employees mixed this currency with other bank currency and credited the false account (Money Laundering Alert, December, 1989).

8. Bank Loans

Launderers have even used unlikely services such as a bank loan to launder illicit money:

> A Canadian landed immigrant who resided in California for the past number of years recently returned to Winnipeg and opened a bank account by depositing two U.S. bank drafts for $12,000. He also deposited $10,000 (US) in cash in the form of fifty dollar bills. Shortly after opening this account, he approached the bank about taking out a loan for $11,000 to pay off a U.S. loan currently on his automobile. The loan was denied.
>
> It is suspected that the individual was attempting to substitute part of the illicit funds brought into Canada by way of the Canadian bank loan. It is believed that once the loan was obtained, the subject would have paid off both the U.S. loan and then the Canadian loan. He would then be able to sell the vehicle (a BMW) and deposit the "clean" money into the bank (Canada, RCMP case files).

9. Bank Acting on Behalf of a Customer

A chartered bank in Canada has the power to conduct transactions in its own name on behalf of a customer. A bank can also perform other non-banking duties for a customer in the name of the institution such as purchasing securities and real estate. This arrangement makes it very difficult to trace illicit money to the launderer.
One recent case reveals how criminal launderers abuse this particular service of banks to obscure any trail between the illicit assets and the criminal owner:

> On May 11, 1989, the Supreme Court of Ontario froze $13.5 million (US) in the account of a branch of the Swiss Bank of Canada. The account itself was registered in the name of a Panamanian Bank. Drug Enforcement Administration (DEA) officials in the U.S. allege that the Panamanian Bank arranged through its parent company, Banco de Occidente of Columbia, the electronic wire transfer of the money into an account of the Swiss Bank Corporation (Canada), a foreign subsidiary of Switzerland's second largest bank.
>
> The DEA claims that "the money is part of the proceeds of a $1.2 billion Columbian cocaine and marijuana trafficking conspiracy that was smashed by U.S. law enforcement officials in late March in an undercover operation code-named 'Operation Polar Cap'" (Malarek 1989, p. 3).

10. Bankers' Discretion

Some banking officials will tolerate and may even encourage formal rule-bending to service those whom they deem to be important customers.[10] This discretionary service occurs in the context of an established relationship between a bank officer and a client.

Launderers will often try to establish a friendly but business-like relationship with bank officials in order to gain their confidence. The purpose is to establish the launderer as an upstanding and lucrative customer.

Discretionary services include, among others, allowing clients to set up accounts with unverified or inadequate identification, permitting clients to deposit funds in accounts set up and controlled by the bank itself, acting without power of attorney on behalf of clients in the purchase of securities, and the management of other investments.

One particular case illustrates how criminals will take advantage of a banker's discretion as an important means to utilize the many services of a banking institution to launder the proceeds of crime:

> A organized crime syndicate laundered the illicit proceeds of their drug trafficking business by making cash deposits once, twice or three times a week, predominately in one account at a branch of the City and District Savings Bank in Dollard des Ormeaux, Quebec. Total cash deposits for 1981 equalled $13 million dollars (US). On June 10th alone, a single deposit of $1.2 million was made. The extent of money

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[10] Excluded in this discussion are those conspiratory relationships in which a client bribes bank staff to facilitate laundering. However, corruption of the banking officials is also a very important means of facilitating the laundering process. In a recent Canadian case, a corrupt bank manager assisted a Montreal group of heroin traffickers in the purchase of over $40 million (CDN) in bank drafts, which were then deposited in various foreign financial institutions (Bowie: 1988b, pp. 3-4).

> being laundered was so great that cash would be stuffed into tote bags, loaded onto pick-up trucks and backed up to the front door of the branch.
>
> At a branch of the National Bank on St. Michel Boulevard in Montreal, the group laundered $14 million between November 1981 and October 1982. The cash was brought to the bank in suitcases or paper bags. There was so much cash being deposited, the bank requested it be organized in bundles of $5,000 before being brought in. The request was complied with, and the National Bank accepted these large cash deposits without question and even created a special account for the customer (Marsden, April 7 1988, p. A1).

While it is known that this crime syndicate used at least three banks as well as a currency exchange house to launder illicit money, they preferred the City and District Bank. According to the Montreal Gazette, this was primarily due to the assistance offered by the Dollard des Ormeaux manager, Aldo Tucci. Tucci set up accounts, administered six companies controlled by the syndicate and even initiated a policy to benefit from the large currency transactions conducted through the branch In 1981, the bank transferred Tucci to another branch on Jean Talon Street in Montreal. The syndicate's loyalty to Tucci was so strong that they followed him to this new branch where they continued to use him to administer their finances (Marsden, April 7, 1988, p.A1).

According to a United States Senate Permanent Subcommittee on Investigations, banker discretion is also important in electronic wire transfers:

> "Banker discretion here operates to allow telephone transfers without written authorization.... (They) will agree to enter on their records false foreign account number destinations. They may also assist in fraudulent identification of source orders by not recording the actual source...or other authorization for individuals who wish to avoid recorded association

> with a (wire) transfer" (U.S. Senate, Permanent Subcommittee on Investigations 1983, p. 97).

There are numerous other discretionary services available to "important customers" and banking officials at individual branches may hesitate to curtail these services for fear of losing customers to other banks. Unfortunately, money launderers, because of the large quantities of funds available to them, are often perceived by banking officials as being valued customers and are allowed access to such services. These discretionary services are used to obscure any paper trail, thus maintaining the anonymity of the criminal launderer.

C. Gaining Control of a Financial Institution

Theoretically, one of the most effective means of laundering illicit money through a financial institution would be for the criminal enterprise to actually own and control the institution. This would allow criminal launderers tremendous leeway, by enabling them to circumvent the scrutiny of legitimate institutions and falsify records and documents which would effectively obscure any trail of illicit money.

Police cases document many instances where financial institutions have been established by criminal enterprises in tax haven countries and in the United States (U.S. Senate Permanent Subcommittee on Investigations, 1983). In tax haven countries, a financial institution such as a trust company or bank can be readily established and the U.S. banking system, whose highly de-centralized structure is characterized by small, one-branch operations, is also conducive to this approach.[11] To date, there has been no such case reported in Canada.

In Canada, the incorporation of a trust company or bank under the appropriate legislation is much more difficult in comparison to the situation in tax havens and in the United States. Relatively greater scrutiny is placed on the incorporators, requirements for start-up capital are usually very large, and strict regulations are placed on the type and number of owners and shareholders of a financial institution. However, the levels of sophistication involved in laundering schemes and the amount of capital available to criminal enterprises does not preclude them from this type of venture in Canada. Canadian police cases demonstrate that the use of nominees is a preferred and effective means to hide criminal ownership and could potentially be used to circumvent the scrutiny of ownership regulations of trust companies and banks.

In addition, the regulatory changes presently occurring in this sector, as well as other sectors of the financial community, and the increased participation of foreign interests in Canada's financial service industry may increase Canada's vulnerability to this sort of enterprise.

D. Canadian Banks in Tax Haven Countries

Canadian banks have historically dominated such international tax havens as the Bahamas--handling approximately 80% of banking business in this Caribbean country. In addition to operating branches, Canadian Banks control trust and real estate companies and international banking operations. Canadian banks are so entrenched within the Bahamas that the Royal Bank is the official bank of the Bahamian government.

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[11] In Miami, a group of cocaine traffickers obtained control of a small bank, which they used to launder millions of dollars of illicit cash (Bowie: 1988b p. 4). At one point, a Canadian drug trafficking organization considered the purchase of the Bank of South Palm Beaches in Florida as well as a savings and loan company in Atlanta, Georgia. These plans were interrupted by the arrest of individuals of this organization.

The Bank of Nova Scotia gained infamy due to a much publicized case involving money laundering through branches located in a tax haven countries. The following case, illustrates how a branch of the Bank of Nova Scotia, located in a tax haven, was able to facilitate the international laundering of illicit funds:

> Bruce Griffen, a cocaine and marijuana smuggler from Florida, is believed by the U.S. Federal Bureau of Investigation (FBI) to have laundered approximately $100 million (US) a year between 1975 and 1981.
>
> Griffen would deposit the cash into a branch of the Bank of Nova Scotia located in Nassau, Bahamas. Several accounts would be used, all of them in the name of Nassau-registered corporations. The money was then wired to the Bank of Nova Scotia's Cayman Islands branch and into the account of a company called Cobalt Ltd.
>
> From there the money was wired back to the United States into the bank's New York City branch. Griffen would then disperse it among numerous corporations owned in the U.S (Marsden, January 26 1985, pp. A1-2).

The Bank of Nova Scotia's susceptibility to money laundering, however, does not end with Bruce Griffen. In 1984, the bank was fined $1.8 million (US) by a Miami court for refusing to hand over Bahamian and Grand Cayman records required by a grand jury in a drug case (Simon 1985, p.3). The Bank of Nova Scotia is also the personal bank of

Bahamian Prime Minister Lynden Pindling who was under investigation for allegedly receiving $100,000 in monthly bribes from drug smugglers (Marsden 1989, pp. G1 and G9).

A 1985 article in the Montreal Gazette accused Bank of Nova Scotia employees of maintaining special arrangements with drug smugglers and their lawyers:

> "These bankers didn't ask questions about large deposits, and ignoring normal banking practices kept minimal records to hide the identity of deposits.... some Scotiabank employees have received `tips' of thousands of dollars for their pains...." (Marsden December 21 1985, p.A1 and A4).

This allegation is echoed in a report by a United States Senate Subcommittee on Investigations which states that "...in the Caribbean, one major Canadian international bank has a consistent reputation for encouraging dirty money....", (1983, p.99) an obvious inference to the Bank of Nova Scotia. Partly in response to these allegations, the Bank of Nova Scotia have enacted strict policies to combat money laundering in both its domestic and international branches.

III. RESPONSES OF CANADIAN DEPOSIT-TAKING INSTITUTIONS TO MONEY LAUNDERING

A. General Observations

Deposit-taking institutions cannot be addressed as a uniform group since their adoption of money laundering as a concern has progressed to varying stages. In late 1989 a federal government-private industry working group on money laundering was formed to study money laundering issues related to deposit-taking institutions. Included among the participants of this working group were members of the chartered banking, trust and credit union communities. While the existence of this group has been short, it has already begun to address one of the most important areas in combatting money laundering: record-keeping.

As a result of agreements reached through these meetings the record-keeping of deposit-taking institutions will be augmented to better facilitate financial investigations. One of the first agreements reached was to take steps to ensure that a uniform five-year record retention period is adhered to by all in the deposit-taking industry.

The Canadian deposit-taking industry--in particular chartered banks and national trust companies--has taken concrete steps to address the problem of money laundering. These measures can be summarized in four points:

- Policy Development
- Procedural Implementation
- Staff Awareness Training
- Enhanced Security.

1. Policy Development

Each of the Schedule "1" and "2" chartered banks and national trust companies have instituted corporate policies specifically concerned with the problem of money laundering.

The foundation of this policy is the institution's resolve to never knowingly be a "party to an any transaction related in any way to criminal activity" (Central Guaranty Trust, 1989, p.1). While general in nature, these policies are significant for they establish the parameters within which specific procedural guidelines are implemented and upon which enhanced security and increased education are based.

The Policy Statement for the Royal Bank, for example, includes the following headings:

- Obligation to Serve Legitimate Clients, Not Criminals
- Cooperation With Law Enforcement
- Privacy
- Exceptions to the Duty of Confidentiality
- Court Orders and Disclosure on Bank's Initiative
- "Extraterritorial" Situations--Provision of Information
- Cooperation in Seeking Permission
- Reasonable Grounds to Believe Crime Involved.

2. Procedural Implementation

Procedures designed to guide staff on specific transactions and services conducive to money laundering have been implemented. These procedures are guidelines which must be followed by staff for certain transactions. Procedures are seen to stem from the "know your client rule of good banking practice."[12]

Knowing the client is a way of "knowing the money." Clients and transactions that are not known or who request "suspicious" transactions are given greater scrutiny. For example, the Royal Bank of Canada uses a standardized "Declaration of Source of Funds" form. If the client refuses to complete and sign this form the bank official may refuse the transaction or refer the transaction to a more senior employee.

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[12] Michael Ballard, Canadian Bankers' Association Opening Statement to the House of Commons Legislative Committee on Bill C-61, April 26, 1988.

3. Staff Awareness Training for Increased Vigilance

Institutions have educated staff to enhance their awareness of the problem of money laundering. This education concentrates primarily on familiarizing them with commonly-used laundering schemes and tips on how to detect suspicious transactions. Money laundering "warning" posters, videos and information sessions are used to deliver this information to the managers and other personnel.

While the banking community acknowledges that education is paramount, most institutions have not incorporated it into the formal training program for bank employees. Instead, education is delivered through policy statements, communication with the security division and dissemination of information through videos.

Based on the education they receive on money laundering and guided by the traditional "know your client" rule, staff are encouraged to refer suspicious transactions to their superior who, if not satisfied as to the source of the funds involved, may decline the transaction and/or refer the matter to the security department of the institution.

4. Enhanced Security

In order to develop a defence against money laundering, individual institutions have enhanced their internal security initiatives. In general, these programs have been developed by special committees or task forces of senior bankers representing various disciplines within the bank, and administered by the security director of the bank. The main objective is "the development and implementation of policies and procedures designed to detect and prevent money laundering, along with appropriate staff awareness and training programs" (Canadian Bankers' Association, June 1988).

In addition, resulting from consultations between banking officials and law enforcement, it was decided that investigative and enforcement actions under the provisions of Bill C-61 would be best coordinated between the police and the security divisions of the banks concerned. Thus, all suspicious activities at a branch level are referred to these divisions which have become the central conduits in the major deposit-taking institutions for money-laundering related policies and enforcement.

B. Specific Sectors of the Deposit-Taking Industry

1. Chartered Banks

Schedule "1" chartered banks and their industry representative, the Canadian Bankers' Association (CBA), have emerged as the leaders within not only this industry, but throughout Canada's business and financial community, in developing mechanisms to combat money laundering.

The "big five" banks were the first institutions in Canada to acknowledge the problem of money laundering and institute specific polices and procedures. Many of the initiatives of the "big five" banks have been replicated at smaller banks and trust companies.

Policy statements put forth by the Canadian banking industry have articulated the fact that Canadian banks are concerned about becoming unwitting instruments to further the goals of criminal enterprises. Thus, according to former CBA president Robert MacIntosh, the banking community has pledged to combat money laundering in every reasonable way:

> "The Canadian banks stand together in their commitment not to allow their domestic or international service networks to be used to conceal, disguise or facilitate the flow of criminally obtained funds throughout the world" (Canadian Bankers' Association, June 1988).

As the industry representative for chartered banks, the CBA has taken a number of steps to address the problem of money laundering. The CBA made significant input into Bill C-61 and was one of the first industry groups to welcome the introduction of this legislation (Canadian Bankers' Association, April 1988).

The CBA also established a task force to address money laundering-related issues and concerns common to all banks. Composed of security directors, predominately from Schedule "1" banks, the task force is charged generally with:

> "determining the scope of the problem in Canada, monitoring new developments in money laundering schemes at home and abroad; reviewing protective measures already in place along with those contemplated for future implementation; and promoting industry liaison with law enforcement groups, government agencies and other banking associations and organizations throughout the world" (Canadian Bankers' Association, June 1988).

The CBA has worked closely with federal and local law enforcement in the preparation of educational programs and compliance protocols for dealing with Bill C-61 (Ballard: 1989). They have also been active in working with individual banks, in particular Schedule "2" banks, in increasing the understanding of Bill C-61, the formulation of policy statements and the implementation of procedural mechanisms to prevent money laundering. In early 1989, the CBA sponsored a conference for Schedule "2" banks entitled "Money Laundering and the Law."

Every Schedule "2" bank operating in Canada now has policies regarding money laundering in place. In general, the policies are based either on measures adopted by their parent bank or the policies and procedures implemented by Canada's "big five" banks.

With few exceptions the following anti-money laundering initiatives are in place:

- written policies and procedures are in effect at all branches;
- uniform policies apply to foreign branches and to correspondent banks;
- dollar thresholds are specified for suspect transactions;
- in-house report forms are used for certain cash transactions;
- suspect transactions are reported to police;
- maintain records of suspected transactions reported to the police are maintained;
- awareness and training programs are in place; and
- audio-visual training aids are being used.

The Canadian Bankers' Association and the RCMP are developing operational guidelines for money laundering investigations. This cooperative agreement concentrates on such vital areas as disclosure of banking information (including solicited and unsolicited disclosure), civil proceedings and retention of banking records. In addition to this written agreement, regional meetings are being held between the banks and the police in order to facilitate a more effective interchange of information and assistance.[13]

2. Trust Companies

Canada's national trust companies have also taken concrete steps to address the problems of money laundering. In particular, Canada Trust, Central Guaranty, Montreal Trust, Royal Trust and Standard Trust each have implemented policies aimed at combatting money laundering. In general, the initiatives in place are similar to those instituted by the "big five" banks. The measures adopted by the national trust companies, however, have not been replicated at smaller firms.

As part of this report, an informal telephone survey of a sample of smaller Canadian trust companies was conducted. This survey revealed that while there is an awareness of the problem of money laundering, few policies and/or procedures have been implemented. Officials believe there is little chance that laundering could occur at their companies, because they do not possess the services of chartered banks. Relative to larger banking institutions, the smaller trust companies do not have the facilities to handle large quantities of cash nor do they offer the comprehensive range of domestic and international services available at national deposit-taking institutions. Thus, they are less attractive to those who need large-scale money laundering transactions.

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[13] Telephone interview with Mr W. A. Smythe, Chief Security Officer, Toronto Dominion Bank, March 26, 1990.

Despite the inability to match the larger institutions service-for-service, this does not preclude smaller trust companies from being used as laundering vehicles. Some officials believe that their institutions do not offer the "traditional" services conducive to money laundering such as international wire transfers.

They are unaware that a sophisticated launderer can very effectively utilize services offered by smaller trust companies such as investment certificates, registered retirement savings plans, term deposits and registered investment funds. These services establish smaller trust companies as potentially effective laundering vehicles.

While there are no policies or procedures that deal directly with deterring and detecting money laundering, there are mechanisms in place which can potentially perform this role. For example, because tellers, in general, are not permitted to keep on average more than $2,000 in their tills, they must inform a supervisor or manager of large cash deposits. The supervisor must also be informed if a teller requires access to the vault. The smaller one-branch operations have the additional advantage that they can more effectively operationalize the "know-your-client rule."

The Trust Companies Association of Canada has also slowly addressed the issue of money laundering. Limited by a mandate which prohibits the Association from requiring or even recommending policy to member institutions, it's initial efforts had been to merely notify members of the enactment and provisions of Bill C-61. The Association is becoming more active and since late 1989 with officials sitting as members of a federal government-private industry working group on money laundering.

Flowing from these consultations the Trust Companies Association conveyed to its member institutions the principles of record-keeping which can most effectively facilitate a laundering operation by law enforcement. The Trust Companies Institute, the educational arm of the Association, is holding seminars for member institutions on the issue of money laundering.

3. Credit Unions

For the purposes of this report, an informal survey of credit unions and caisses populaires across the country was undertaken in the summer of 1989 to determine their awareness of and initiatives taken towards money laundering. While the number and heterogeneity of credit unions in Canada make generalizations difficult, the following observations can be made.

The survey revealed that few efforts have been made by individual credit unions to combat money laundering. Of the credit unions surveyed, none have instituted formal policies and procedures dealing with suspicious transactions. There is little education or formal training of personnel who come in contact with customers, and any knowledge of money laundering has been gleaned from bulletins sent out by Credit Union Centrals, the provincial associations of most credit unions. A small percentage of credit unions surveyed indicated that education concerning money laundering took place at a branch level, while an even smaller percentage stated that discussions took place at the upper management level.

As with smaller trust companies, the lack of action among credit unions results from a firm belief on the part of credit union officials that the structure of their institutions are not conducive to laundering. This argument is based on the premise that the credit unions are too small for money laundering to take place without the knowledge of a credit union employee.

Notwithstanding the results of this informal survey, initiatives have been pursued at the professional association level which is slowly filtering down to credit unions and caisses populaires. The National Risk Management Committee for Credit Unions and Caisses Populaires[14] has made significant progress in developing educational materials for credit unions and caisse populaires. A Risk Manager's Guide for monitoring, investigating and reporting of money laundering has been developed and is currently being used by all credit unions and caisse populaires risk managers across Canada. A video, aimed at front-line staff, has also been produced and over 235 videos have been distributed to date in Canada.

In addition, the Committee is implementing a suspicious transaction reporting system for its member credit unions. Based on the system implemented at a major chartered bank, it stresses the reporting of any type of suspicious transaction, regardless of its size. This system will be implemented by credit unions only on a voluntary basis.

In addition to the Risk Management Committee, the Canadian

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[14] The National Risk Management Committee is made up of Risk Managers of credit unions and caisses populaires in Canada. A Risk Manager is the designated intermediary between a credit union or caisses populaire and law enforcement.

Cooperative Credit Society has been involved with the federal government/private industry working group on money laundering. Finally, provincial credit union centrals or credit union deposit guarantee corporations, through periodic newsletters have informed members of the problem of money laundering (see Credit Union Central of Ontario, "Money Laundering," February 27, 1989).

In sum, because each credit union and caisses populaire system is autonomous, the extent and speed of education will vary from one system to another. According to Gil Cloutier, Chairman of the National Risk Management Comittee, however, the initiatives pursued within the credit union and caisses populaires sector will attempt to ensure that by the end of 1990 all credit unions and caisse populaires will be aware of money laundering and equipped to combat this problem.

C. Summary: Responses Of Canadian Deposit Institutions to Money Laundering

There is no empirical data to support the contention that money laundering has dramatically decreased at the "big five" banks and other institutions which have instituted money laundering policies, procedures and educational programs. However, those institutions which have taken these steps have observed some tangible results.

The effectiveness of money laundering policies and procedures can be measured by observing institutions which have introduced a reporting system for "suspicious," "unusual" or "large" currency transactions. Two domestic institutions lead this initiative by voluntarily introducing reporting to the police under these specific circumstances. Other main banks and trust companies are following suit.

The CBA reported that they have passed along 400 "suspicious" reports to the police during 1989 and in the four months following November 1989, they passed 284 instances to law enforcement.[15]

This monitoring system reflects increased staff awareness of the risk of laundering and emphasizes the value of education at the branch level. Referrals have resulted in internal investigations, and in some cases further investigation by law enforcement. A small percentage of these have resulted in money laundering charges.

IV. GOVERNMENT REGULATION AND MONEY LAUNDERING

A. Government Regulation of Deposit-taking Institutions

Responsibility for regulating deposit-taking institutions is shared by the federal and provincial governments, except for chartered banks which are regulated exclusively by the federal government. The following page lists the Federal and Provincial Government bodies regulating deposit-taking institutions in Canada:

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[15] Security personnel receive reports from branch tellers regarding suspicious transactions. Completed forms are turned over to the security department of these institutions for internal review at which time some are forwarded to law enforcement (Phone interview with Michael Ballard, March 26, 1990).

Government Bodies Regulating Deposit-Taking Institutions in Canada

Federal	Deposit-Taking Institutions Division, The Office of the Superintendent of Financial Institutions (OSFI)
British Columbia	The Office of the Superintendent of Financial Institutions, Ministry of Finance and Corporate Relations
Alberta	The Office of the Superintendent of Financial Institutions, Treasury Department
Saskatchewan	Corporations Division, Department of Consumer and Corporate Affairs
Manitoba	Director of Regulation, Department of Cooperative Development
Ontario	Superintendent, Deposit-Taking Institutions Ministry of Financial Institutions
Quebec	L'Inspecteur général des institutions financières, Ministre délégué aux Finances et à la Privatisation
Nova Scotia	Credit Unions and Trust Companies Division Department of Consumer Affairs
New Brunswick	Corporate and Trust Affairs Consumer Affairs Department of Justice
Newfoundland	Register of Deeds, Companies and Securities, Commercial Relations Division, Department of Justice
Prince Edward Island	Corporations Division, Department of Justice

The mandate of government bodies regulating deposit-taking institutions is to protect the customer and ensure public confidence through depositor protection. This mandate is achieved predominately through ensuring that deposit-taking institutions are financially sound and remain solvent. The principle responsibilities flowing from the mandate of government regulatory bodies consists of four basic aspects:

- registration/incorporation;
- compliance/examinations;
- investigation; and
- disciplinary penalties/punitive actions.

1. Registration/Incorporation

Regulatory bodies screen all applications for incorporation of institutions and have the power to place conditions on incorporation and approve and deny applications.

2. Compliance/Examinations

Examinations of registered institutions are conducted by regulatory bodies to determine whether they are in compliance with legislation. These compliance examinations are used as a preventive tool, and their principal objective is to ensure that the institution is financially solvent.

3. Investigation

Legislation gives the regulatory bodies extensive powers to investigate and inspect all aspects of a deposit-taking institution at any time it is deemed necessary. The majority of regulatory bodies maintain investigative units which operate outside, or as a part of, the examinations branch. The regulatory bodies possess the power to hold hearings and take admissions under oath.

4. Disciplinary Penalties/Punitive Actions

Regulatory bodies can assess civil penalties including suspension of registration, financial penalties, rehabilitation and receivership, or liquidation of the institution. In extreme situations, regulatory bodies also have the power to take control of the assets and operate the institution.

Other responsibilities include: acting as a repository of information about the industry, formulating and recommending policy and legislative amendments, conducting research, and offering a medium for resolving disputes between institutions and customers.

B. Analysis: Strengths and Weaknesses of Government Regulation

1. Strengths of Government Regulatory Bodies

Government regulatory bodies have inherent strengths which can facilitate law enforcement efforts to combat money laundering. The following list of powers and duties performed by the regulatory agencies can assist in the detection and investigation of money laundering:

i. Power to Investigate

The legislative power of regulatory bodies to investigate industry participants is substantial. They possess the power to enter the premises of an institution at any time and demand to see documents and records.

While not explicitly spelled out in legislation, this potentially includes the power to examine and investigate all records and documents pertaining to the accounts and transactions of individual customers (Canada, The Bank Act, R.S.C. 1985 c. B-1, s. 246 and 302[5]). In addition, many regulatory bodies have the power to hold inquiries and solicit evidence from witnesses under oath (Canada, The Bank Act, R.S.C. 1985, c. B-1, s. 246[7]).

The investigatory powers of regulatory bodies could be important to an investigation by Canadian law enforcement into money laundering involving a Canadian bank within an international tax haven. With few exceptions, the financial accounting of these foreign branches of Canadian banks is done within head offices in Canada. Thus, while Canadian banks may attempt to utilize foreign secrecy laws, records potentially significant to a laundering investigation conducted by Canadian law enforcement and involving tax havens can be inspected and seized within this country.

Further, government regulatory bodies at the federal level have expressed confidence in the fact that they possess the powers to force Canadian banks operating internationally to produce records and information from branches in tax haven countries as well as documentation about other aspects of its international operations. To date, however, these powers have not yet been applied.

ii. Record-keeping

While most information submitted to government regulatory bodies is both too general and inappropriate for the detection and/or tracing of illicit funds, potentially significant records are maintained by the individual deposit-taking institutions and their branches. Because of their investigative powers, government regulatory bodies have almost unrestricted access to these records in the course of an examination and investigation.

At present there are no uniform record-keeping requirements across the deposit-taking industry; neither the type nor the storage period of records are specified legislatively (Murray, n.d., p.1). In addition, records are stored in such a way that requests for retrieval by regulatory authorities and/or law enforcement is both time-consuming and costly for the institution.

In response to this situation, the Honourable Gilles Loiselle, Minister of State for Finance, announced on March 20, 1990 that a framework for record-keeping would be legislated in order to assist police in money laundering investigations. This legislation is to become a component of the National Drug Strategy 1990 Mid-course Review.

iii. Compliance Examinations

Regulatory bodies conduct periodic examinations of regulated institutions to ensure that they adhere to the legislation and that they are financially solvent. While there is little presently incorporated into most compliance examinations to facilitate the effort against money laundering, they do nonetheless represent a potentially significant tool for regulatory bodies to ensure that regulated institutions have adequate policies and procedures in place to combat money laundering.

iv. Audit/Inspection

Federal and provincial legislation dealing with deposit-taking institutions requires each institution to have at least one auditor (Canada, The Bank Act, R.S.C 1985, c. B-1, s. 237). The powers of the auditor(s) can be far-reaching and may be used to help identify irregularities in a bank's records which may enable authorities to detect and trace illicit funds. For example, a criminal investigation into money laundering at the Caisse Notre Dame de la Merci in Montreal was initiated after an internal audit of the branch detected suspicious activity (Marsden, May 1988, p.3).

v. Infrastructure

In sum, most government regulatory bodies possess the legal and organizational infrastructure which can potentially be of great value to law enforcement, both to prevent and react to money laundering. Compliance examination programs, intelligence gathering, information storage, legislative powers and investigative and industry expertise of these agencies are unparalleled by law enforcement.

2. Weaknesses of Government Regulatory Bodies

In addition to their strengths, the structure and operation of government regulatory bodies can also pose problems to facilitating effective law enforcement against money laundering. The following identifies many of the structural impediments which restrict the efforts of regulatory bodies to combat money laundering.

i. Limited Mandate

The mandate of the government bodies regulating deposit-taking institutions in Canada limits them, for the most part, to monitoring aspects of financial institutions that are unrelated to money laundering. The effect of this limited mandate on government regulatory agencies can be seen in the contradiction between the objective of the regulatory framework and the objective of combatting money laundering.

The objective of regulation is to protect individual customers, not to police them. Regulatory bodies concentrate overwhelmingly on the solvency of the institution, thereby protecting the deposits of the customer. The controversy surrounding the collapse of provincially-regulated Principal Trust Co. has created an even greater sensitivity to guarding against the insolvency of financial institutions (Kingston 1989, p. E7). This regulatory focus, however, fails to take into account that in the majority of laundering cases, the financial institution is the unwitting accomplice, and thus innocent of any illegal activity, while the customer constitutes the criminal element.

Despite its logistical and legislative strengths, at present the regulatory bodies' powers are confined mainly to a reactive role. The OSFI acknowledges that it "is not geared to detect such activities as money laundering by clients or non-clients" of banking institutions (Mitchell 1989, p.2).

Thus, like other government bodies regulating the different sectors of Canada's business and financial communities, the responsibility for actively monitoring transactions conducive to money laundering is presently beyond the scope of both federal and provincial regulatory bodies.

ii. Lack of In-depth Monitoring

The size of Canada's deposit-taking sector combined with the vast quantity of daily transactions makes it virtually impossible for government regulatory bodies to monitor every branch, let alone every transaction or customer. While samples of individual customers and transactions are examined, this exercise is predominately for statistical purposes and does not provide a focus which would identify money laundering. As a consequence, government regulatory agencies, for the most part, regulate individual institutions at a macro level which fails to detect transactions which would appear constitute money laundering and/or identify criminal money launderers.

iii. Absence of Uniform Recording Requirements

While some major Canadian banks have adopted financial recording requirements, there is little uniformity throughout the industry, and the enforcement of this voluntary recording has been inconsistent. Likewise, while banks are beginning to implement "suspicious transaction reporting" systems there is no uniformity among the deposit-taking institutions. In addition, recent police cases have demonstrated that large cash transactions continue to be accepted by some bank branches without being reported either by tellers to bank management or by bank management to law enforcement.

iv. Lack of Powers to Facilitate Forfeiture

Deposit-taking institution regulatory bodies are given few powers to promote the forfeiture of proceeds of crime. Most regulatory bodies are given the power to freeze only those assets of the institution itself (For example, see Alberta's Trust Companies Act, R.S.A. 1980, ch. T-9, ss. 183[1]). Most legislation does not give regulatory bodies the power to freeze and seize deposits or other assets of customers.[16]

C. Regulatory Initiatives to Combat Money Laundering

The ability to combat money laundering by regulatory bodies varies along federal and provincial lines. Despite the aforementioned weaknesses, the structure and powers of the federal and provincial regulatory bodies are sufficient to combat this problem. However, in order for these powers to realize their full potential, existing legislative and structural strengths of the regulatory bodies must be buttresses by initiatives specifically adopted to address the problem of money laundering.

At present the federal OSFI has taken the greatest steps towards combatting the problem of money laundering. The main focus of OSFI's efforts in this area concentrate on encouraging financial institutions under its supervision to "maintain and strengthen internal rules and procedures to detect money laundering and to urge full cooperation with law enforcement agencies investigating money laundering activities" (Mitchell 1989, p.2). To this end, OSFI has adopted the standards set out by the Bank for International Settlements. These standards are contained in a document titled "The Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering." The OSFI has communicated to chartered banks that this document is the minimum standard which is expected of Canadian chartered banks.

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[16] Revisions to the Ontario Loan and Trust Corporation Act allow Ontario's Superintendent of Deposit Institutions to freeze the deposits of a client (R.S.O. 1987, ch. 33, ss 208[1]). However, this amendment does not make stipulations for the use of this power in relation to suspected Criminal Code offenses, nor is it likely to be used to facilitate a criminal investigation due to a body of case law separation being made between administrative and criminal law.

Individuals within the Deposit-Taking Institutions Division of OSFI have worked closely with the banking industry to develop policies and procedures to stem money laundering. The Division has taken the initiative to instruct Schedule "2" banks to develop internal money laundering detection procedures and soon expects to implement a formal system to monitor these procedures. Schedule "1" banks have also been instructed to develop policy, although it is felt that no formal monitoring system will be necessary.

The OSFI has also drafted a "Best Practices Paper" detailing specific measures to combat money laundering at deposit-taking institutions that will be distributed to all federally regulated deposit-taking financial institutions.[17]

In this document the OSFI encourages the development of formal policies regarding money laundering within federally regulated deposit-taking institutions, encourages these institutions to designate a senior officer to be responsible for money laundering deterrence and detection procedures and outlines the minimum requirements for formal internal control procedures.

The OSFI has worked closely with the RCMP on money laundering investigations. The purpose of a money laundering investigation by OSFI is to ensure that there is no threat to an institution's solvency and that consumer confidence remains strong. OSFI's major concern is "the potential erosion of public confidence which can ensue for those financial institutions tainted by money laundering" (Mitchell 1989, p.2).

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[17] Document titled Best Practices for Deterring and Detecting Money laundering, circulated to federal officials April 4, 1990 in advance of wider distribution.

In addition to the federal OSFI, many of the provincial regulatory bodies have taken concrete steps to combat money laundering. For example:

- British Columbia's Office of Superintendent of Financial Institutions has investigated money laundering cases referred to them by member institutions. Many of the money laundering cases investigated have been turned over to law enforcement for criminal investigation.

- The Alberta Credit Union Stabilization Corporation and Manitoba Credit Union Central are involved with the Canadian Co-operative Society's task force on money laundering and have indicated an eagerness to educate credit unions on preventative measures and detection methods.

- The Saskatchewan Credit Union Deposit Guarantee Corporation is given powers through the Credit Union Act (R.S.S. 1984-85-86, c. 45.1) to conduct audits. These audits are conducted on a yearly basis. The Corporation uses an audit technique called the "transaction audit" which can potentially reveal money laundering activities. In such an audit, any transaction considered by the auditor to be "large" is reviewed.[18] The Corporation also regulates industry members; however, it places great emphasis on educating its members on security issues as a means to ensure a healthy business. Flowing from this philosophy, the Corporation is producing a video to train staff to spot money laundering schemes. In addition, the Corporation has distributed bulletins to the credit unions to increase their awareness of money laundering schemes and suspicious transactions. The problem of money laundering has also been discussed at the management level of the Corporation.

- The Investigative Branch of Ontario's Ministry of Financial Institutions has cooperated with law enforcement in money laundering investigations. The Investigative Branch employs ten investigators who are appointed special constables. This status gives them access to law enforcement intelligence information as well as powers to conduct criminal investigations. In addition, this branch has conducted eduction seminars on money laundering with member institutions and is in the process of developing a video which will be distributed to member institutions.

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[18] Phil Flay, Saskatchewan Credit Union Deposit Guarantee Corporation. Personal Interview. August 15, 1989.

- Officials within the Surintendent des institutions de dépôts du Québec have expressed concern that deposit-taking institutions in Quebec may be used to facilitate the laundering process. The Superintendent has also expressed a willingness to propose legislative and regulatory amendments which would discourage the use of financial institutions as vehicles to launder illicit profits. Such changes, however, would be contingent upon the federal government and other provinces proposing similar amendments.

Notwithstanding these isolated examples, government bodies regulating deposit institutions have been slow to develop comprehensive policies and procedures to combat money laundering. As such, the existing organizational and legislative strengths have gone untapped due to the lack of a thorough program of money laundering initiatives. This is particularly evident at the provincial level.

There are insufficient mechanisms built into bank examination programs conducted by government regulators to detect money laundering. Also, regulatory bodies have not implemented programs to monitor the policies adopted at the deposit-taking institutions to combat money laundering. Money laundering is a relatively new concern, and at the provincial level most investigative units have little experience or expertise in the money laundering area. This lack of expertise also means that regulated institutions cannot turn to the regulatory bodies for policy advice, education, etc.

In sum, the initiatives made by regulatory bodies to combat money laundering have been at best, piecemeal and at worst, entirely absent. For those bodies that have addressed this problem, the steps taken are not commensurate with the extent that the jurisdiction's institutions have been used to launder the proceeds of crime. One of the repercussions of this deficiency is that the lack of initiatives at the regulatory level often translates into a similar void among the regulated institutions.

Despite this void, however, many regulatory officials have expressed a desire to become more involved in the effort to combat money laundering. Provincial involvement is absolutely essential because launderers will logically gravitate to those institutions where security is more lax. Greater involvement by regulatory authorities will ensure that all institutions will be capable of combatting this problem. At present, many of the provincial regulatory bodies are waiting for the federal government to invite and co-ordinate the active participation of provincial regulatory bodies within its money laundering initiatives.

V. RECORD-KEEPING PRACTICES AND THE DETECTION OF MONEY LAUNDERING

Record-keeping is the essential element in both preventive and reactive efforts to combat money laundering involving deposit-taking institutions. Records form the paper trail leading from the laundered assets to the criminal enterprise. In different situations they may serve to detect money laundering transactions, to provide essential information to a police investigation and to form the basis for the criminal prosecution of a money launderer.

The greatest source of records for a laundering investigation lies with the institutions at which the transactions were made. The record-keeping practices of institutions within the deposit-taking industry are entrenched in the corporate policy of individual institutions. Every transaction performed by a customer is recorded and filed by the institution involved in the transaction. However, the types of records maintained by an institution as well as the information solicited on these records varies with the type of institution (chartered banks, trust companies and credit unions) as well as among institutions within a respective sector.

The four services used most often by criminals in the laundering process are:

- account openings;
- deposits;
- the purchase of negotiable instruments; and
- electronic wire transfers.

For purposes of this study, the record-keeping practices of an Ottawa branch of the Bank of Montreal were examined for these four bank services. Unless otherwise noted, all records retained for longer than three years are stored at a regional warehouse.

A. Account Openings

When opening an account, a customer is required to complete two documents: a signature card and a new account application form. Information from these documents is then placed on the bank's computer to facilitate the processing of information and the production of the bank's larger secondary reports.

1. Specimen Signature Card

When opening a personal account at the Bank of Montreal, a Specimen Signature Card is completed. The following information is recorded on a Specimen Signature card:

- the customer's name;
- branch and account number, account type;
- date the account was opened; and
- the customer's signature.

Positive photo identification will be asked for of the customer, although an account cannot be denied to a customer if photo identification is not produced. The Specimen Signature card is retained on file at the branch for as long as the account is active, and upon closure of the account the record is maintained at a regional warehouse for up to 10 years.

The Specimen Signature card is potentially useful to the proceeds of crime investigation. The original signature of authorized persons for the specific accounts are crucial for proof of ownership of the account and may be required later for a handwriting comparison to connect an accused person with a questioned cheque or other documentation in a laundering investigation.

2. New Account Application Form

Along with the sample signature card, the New Account Application form must be completed which requires the:

- branch and account number;
- other existing accounts (if any);
- name, address and telephone number of the applicant;
- personal identification such as driver's licence number;
- social insurance number;
- occupation and employer; and
- original signature.

Policies within the Bank of Montreal, as well as most of the major deposit-taking institutions, emphasize the importance of checking the customer's identity and following up on the references that are provided.

In the case of corporate accounts, the equivalent form of this document used by most deposit-taking institutions, may bear the corporate seal and is accompanied by a corporate resolution authorizing the establishment of the account.

This record is retained on file at the branch until the account is closed. Upon closing, the record is transferred to a regional warehouse where it is stored for 10 years.

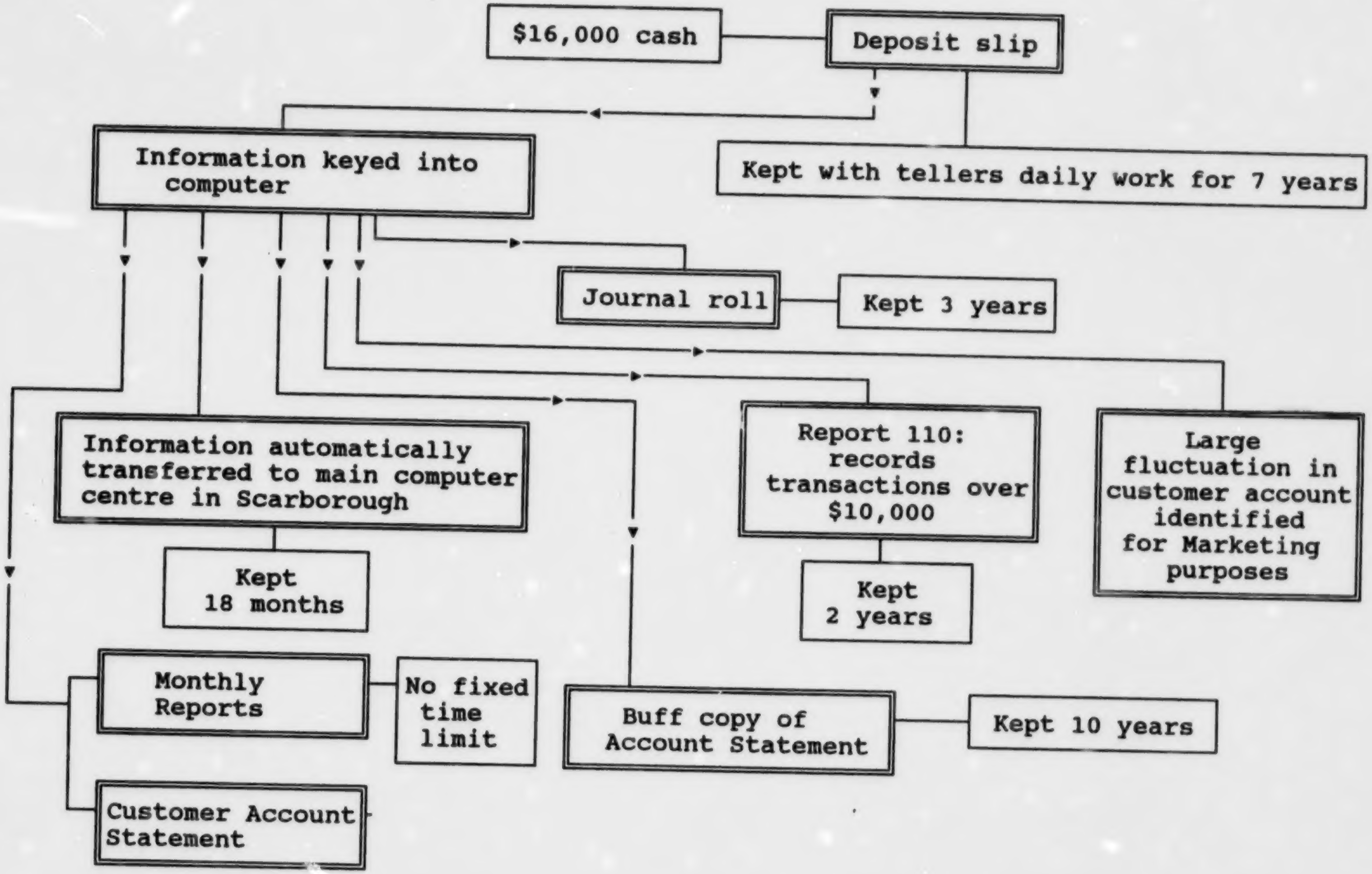
B. Deposits

In many laundering schemes, the first stage is for the launderer to deposit large quantities of small denomination currency. The deposit process and the paper that is generated at this stage is therefore critical for law enforcement purposes.

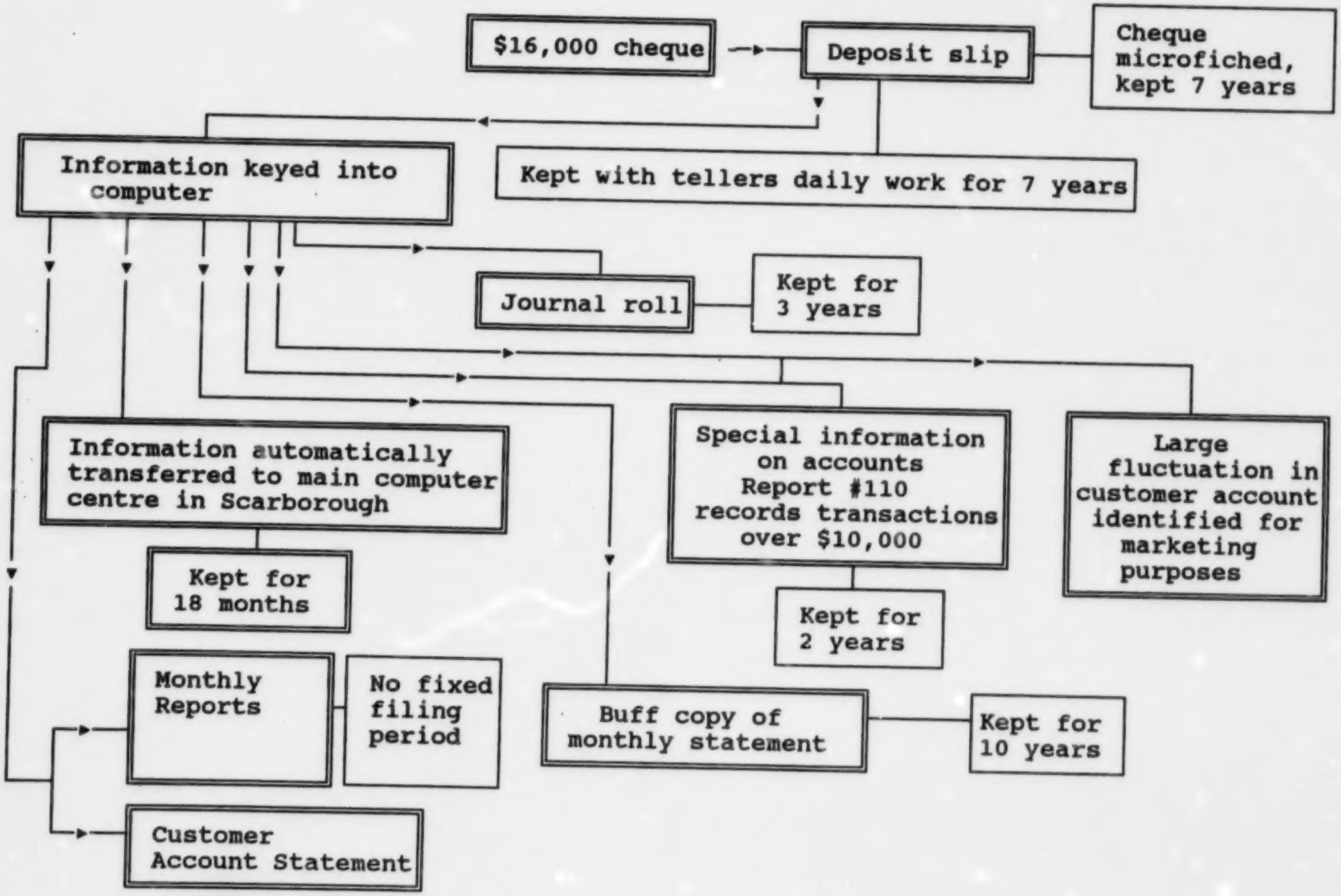
The banking focus on knowing their customers and knowing where the cash is coming from has resulted in a variety of forms and procedures being required by the individual institutions. Banks have specified "suspicious transactions" that the bank officials should watch for and some banks have created a "declaration of source of Funds" form for all transactions of a certain type that are requested from non-except customers.

The following two charts illustrate the routes that the documents follow and the approximate retention periods and locations of the data for records produced from a cash deposit and a deposit of a negotiable instrument.

Bank of Montreal: Deposit - Cash


$16,000 cash
Deposit slip
Kept with tellers daily work for 7 years
Information keyed into computer
Journal roll
Kept 3 years
Information automatically transferred to main computer centre in Scarborough
Kept 18 months
Report 110: records transactions over $10,000
Kept 2 years
Large fluctuation in customer account identified for Marketing purposes
Monthly Reports
No fixed time limit
Customer Account Statement
Buff copy of Account Statement
Kept 10 years

Bank of Montreal: Deposit - Cheque


$16,000 cheque
Deposit slip
Cheque microfiched, kept 7 years
Kept with tellers daily work for 7 years
Information keyed into computer
Journal roll
Kept for 3 years
Information automatically transferred to main computer centre in Scarborough
Kept for 18 months
Special information on accounts Report #110 records transactions over $10,000
Kept for 2 years
Large fluctuation in customer account identified for marketing purposes
Monthly Reports
No fixed filing period
Buff copy of monthly statement
Kept for 10 years
Customer Account Statement

1. Deposit slips

Whether funds are deposited by cash or a negotiable instrument, a customer must complete the deposit slip. The deposit slip contains the following information:

- name of customer;
- account and branch number;
- date; and
- amount of deposit.

The deposit slip is processed by the teller and then kept on file at the branch for seven years. The information is imputed on-line to the bank's computer system. Other records connected directly to the deposit transaction include:

"Report 110"---Special Information on Customers' Accounts: Deposits over $10,000

If the cash deposit is over $10,000, this computer report will be completed. The information includes:

- name of account holder;
- account and Branch number;
- dollar amount.

This report is used for marketing purposes to identify candidates for specific services offered by the bank and is kept for 10 years.

Fluctuations in Customers Accounts Report

A customers account will appear on this report when its monthly average balance varies from for the previous month by more than $5,000 or 10 per cent. This report is normally used for

Commercial and Corporate or Government customers for marketing purposes. The information includes: account number, name of account holder and previous balance. This record is maintained for two years.

C. Purchase of Negotiable Instruments/Exchange Instruments

Police cases demonstrate that illicit cash will often be converted into negotiable instruments, either directly or following its deposit into an account. Cashier's cheques, bank drafts, traveller's cheques, bank money orders and certified cheques are the negotiable instruments most commonly used by launderers.

1. Bank Drafts

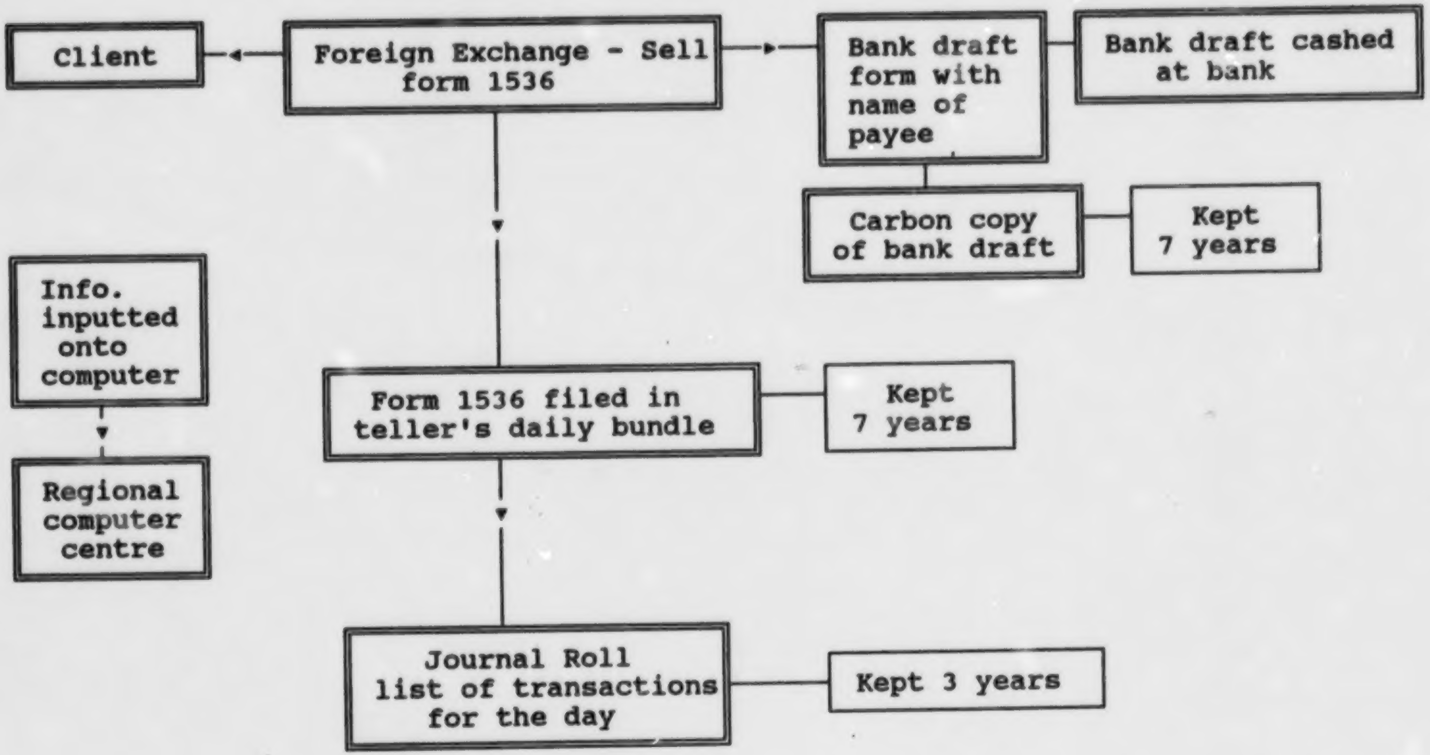
Bank drafts are cheques drawn by a bank on its account with another bank. These accounts are generally used when clients wish to make a payment in a geographical area where their bank does not have a branch office.

If a customer purchases a bank draft, the account is debited, and thus a record of the transaction will be shown on the customer's account statement. However, if a customer specifically requested that a bank draft be purchased in cash, the bank would oblige. The purchase of a bank draft generates a number of records:

- requisition for draft, transfer;
- bank draft form; and
- foreign exchange - sell.

The flow of information, processing and record storage resulting from a purchase of a foreign currency bank draft with Canadian cash is summarized in the following flowchart:

Bank of Montreal: Negotiable Instruments
Bank Drafts: Canadian Cash to Purchase Bank Draft in Foreign Funds


Client
Foreign Exchange - Sell form 1536
Bank draft form with name of payee
Bank draft cashed at bank
Carbon copy of bank draft
Kept 7 years
Info. inputted onto computer
Regional computer centre
Form 1536 filed in teller's daily bundle
Kept 7 years
Journal Roll list of transactions for the day
Kept 3 years

i. Requisition for Draft, Transfer

If a customer purchases a Canadian draft on a foreign bank, this form is completed and the following information is recorded:

- date;
- name of the payee;
- amount of draft;
- account number,
- if paid by cash; name and address of customer and denominations.

ii. Bank Draft Form

Completed by the teller, the bank draft will contain the following information:

- name of payee;
- currency and amount; and
- date.

Once the bank draft has been cashed by the customer and the information processed by the correspondent bank through a clearing system, the original hard copy is returned to the bank upon which it is cashed. A carbon copy of the draft is retained by the institution from which it was purchased and is maintained on file by the branch for seven years.

iii. Foreign Exchange - Sell

If the draft is purchased in foreign funds, this form will be completed. Information solicited on this form includes:

- branch and account number;
- currency in which draft is purchased and amount
- type of negotiable instrument;
- correspondent bank number (identifying country, city and bank);
- name of payee;
- customer signature.

2. Cashier's Cheques and Money Orders

Cashiers cheques are cheques issued by a bank (or Treasurer's cheques issued by a trust company). These can be held indefinitely allowing the client to avoid having a large amount of currency on hand. They are as good as cash and are very useful to money launderers since they may be cashed internationally.[19] Money orders are similar but are made out for specific and usually smaller amounts. Individual money orders cannot be obtained in excess of $1,000. The Bank of Montreal will, however, issue multiple money orders of $1,000. The following records are kept:

i. Money Order Form

This form is completed by the teller. The original is given to the customer. The information recorded by the teller on the bank's copy includes to following information:

- dollar amount of money order;
- date of transaction
- branch number

Once cashed by the payee and cleared, it is returned to the institution from which the funds were drawn. A carbon copy of the form is retained by the institution at which it was purchased and kept for seven years. The following chart summarizes the flow from the purchase of a money order by an account-holding client.

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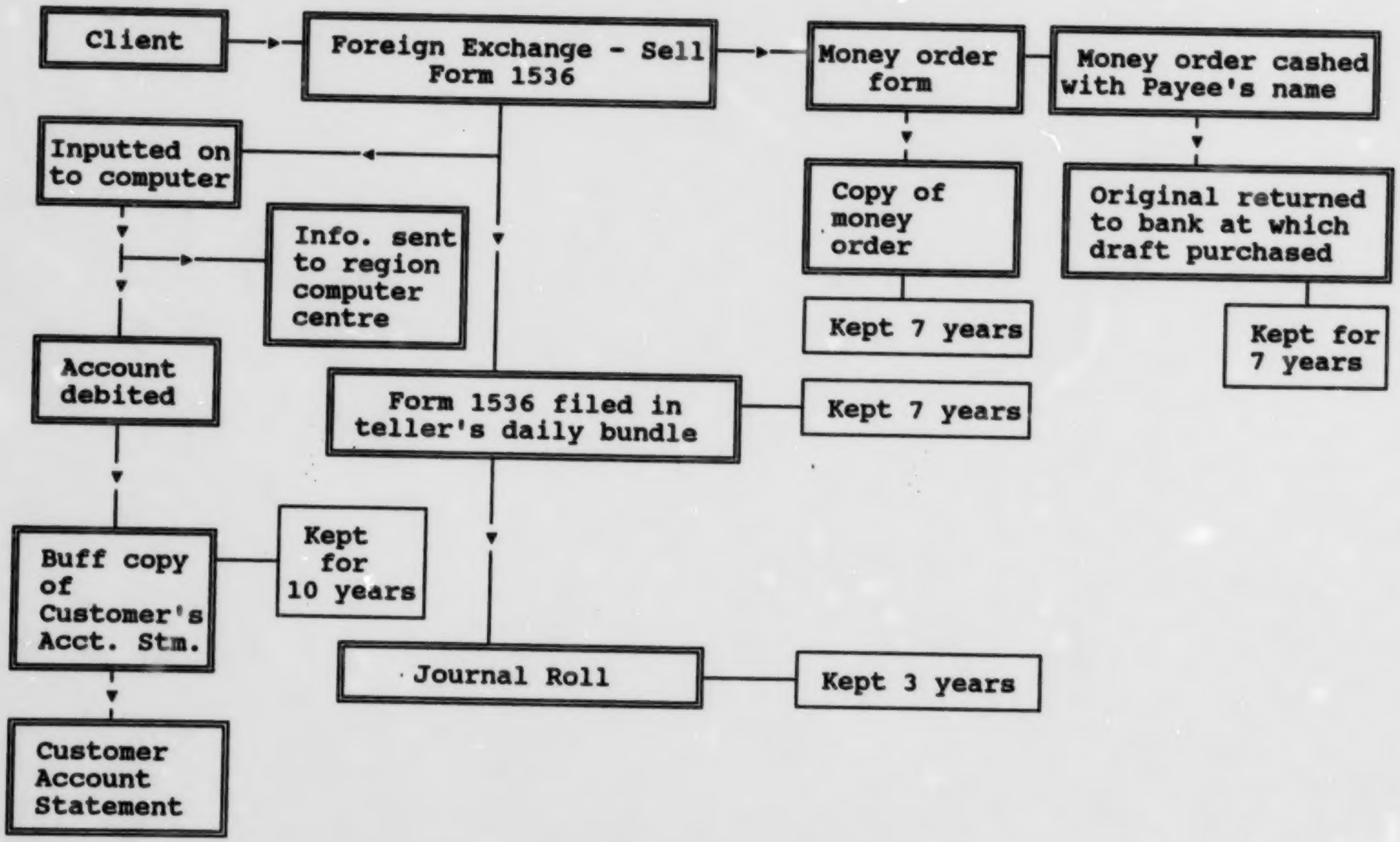
[19] US Dept. of Justice Investigation and Prosecution of Illegal Money Laundering, October 1983, p. 92.

Bank of Montreal: Money Orders - Account-holding Client


Client
Foreign Exchange - Sell Form 1536
Money order form
Money order cashed with Payee's name
Inputted on to computer
Copy of money order
Original returned to bank at which draft purchased
Info. sent to region computer centre
Kept 7 years
Kept for 7 years
Account debited
Form 1536 filed in teller's daily bundle
Kept 7 years
Buff copy of Customer's Acct. Stm.
Kept for 10 years
Journal Roll
Kept 3 years
Customer Account Statement

ii. Foreign Exchange - Sell

If a money order is purchased in foreign funds, this form is completed by the teller. The information recorded is identical to the information collected for bank drafts.

D. Electronic Wire Transfers

The flow of information, processing and record storage resulting from an electronic wire transfer transaction by a non-account holding customer and an account holding customer is summarized in the following two charts.

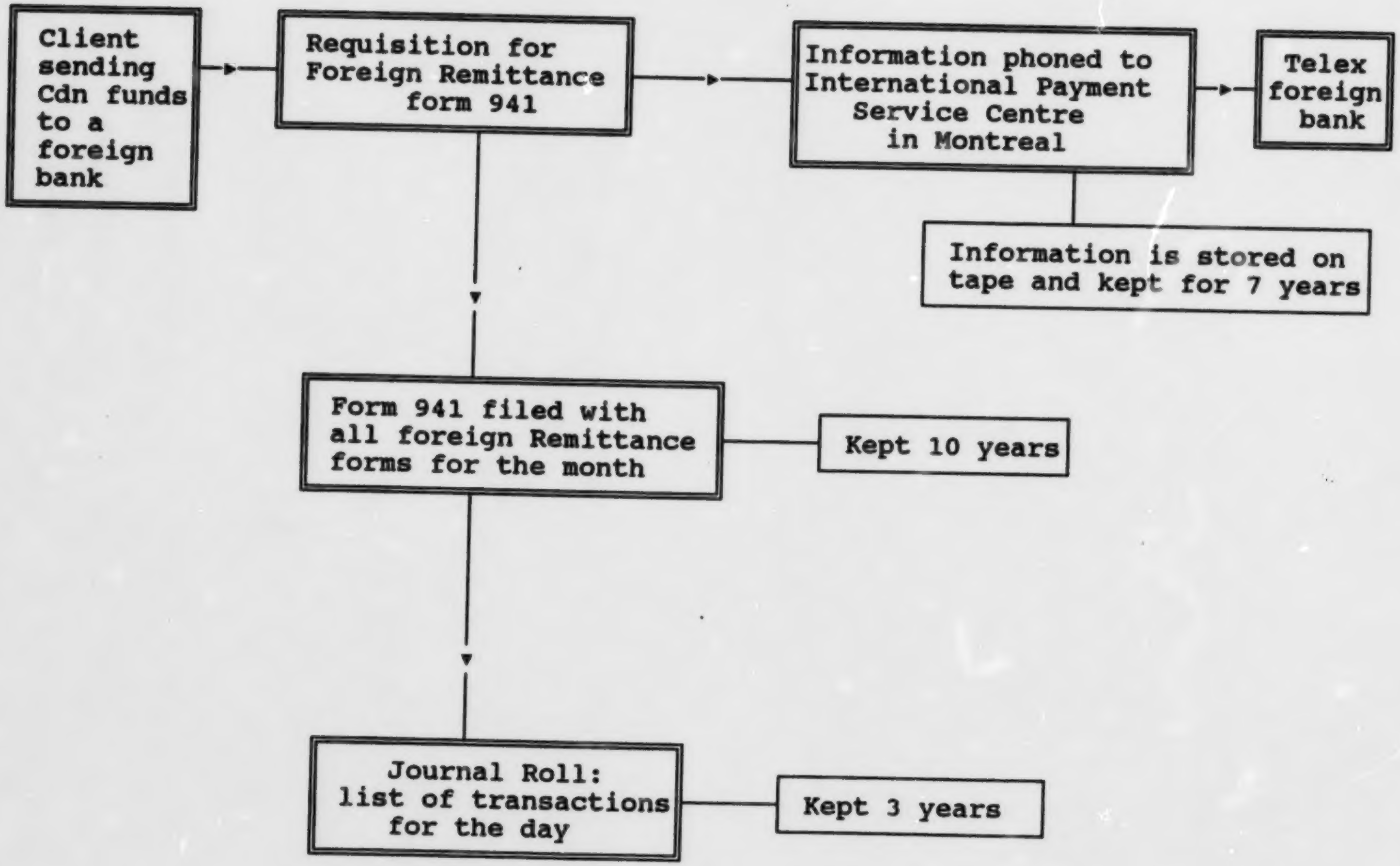
1. Requisition for Draft, Transfer

If a customer transfers funds through electronic wire services, this form is completed and the following information is recorded: date; name of payee; amount of draft; account number, if paid by cash; name and address of customer; and, if cash is used, the denominations.

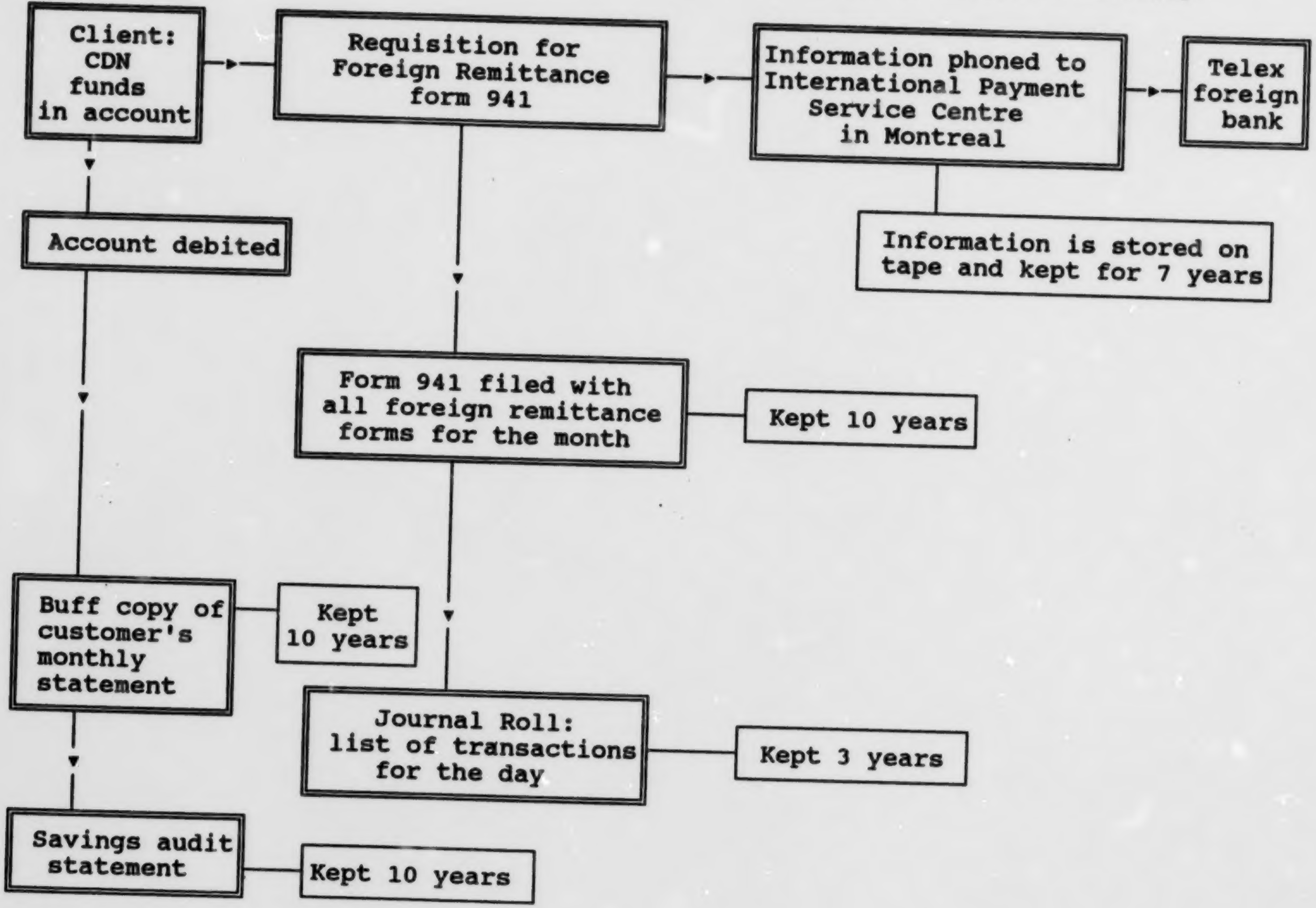
2. Requisition for Foreign Remittance

If the destination of the funds wired electronically is a foreign country, the following information is recorded on the form: date of completion of transaction; transit number; correspondent bank and location; currency; amount; name, address, city and country of ordering customer; name, address, city and country of beneficiary of transfer; beneficiary's bank and account number, city and country; and purposes of remittance.

Bank of Montreal
International Wire Transfers
Cash


Client sending Cdn funds to a foreign bank
Requisition for Foreign Remittance form 941
Information phoned to International Payment Service Centre in Montreal
Telex foreign bank
Information is stored on tape and kept for 7 years
Form 941 filed with all foreign Remittance forms for the month
Kept 10 years
Journal Roll: list of transactions for the day
Kept 3 years

Bank of Montreal:International Wire Transfers, (Account Debited)


Client:
CDN
funds
in account
Requisition for
Foreign Remittance
form 941
Information phoned to
International Payment
Service Centre
in Montreal
Telex
foreign
bank
Information is stored on
tape and kept for 7 years
Account debited
Form 941 filed with
all foreign remittance
forms for the month
Kept 10 years
Buff copy of
customer's
monthly
statement
Kept
10 years
Journal Roll:
list of transactions
for the day
Kept 3 years
Savings audit
statement
Kept 10 years

3. Foreign Exchange - Sell

If a wire transfer is sent in foreign funds, this form is completed by the clerk. The following information is recorded: branch number, account number, currency in which draft is purchased, type of negotiable instrument, foreign currency amount, transit and account number (if travellers cheques or wire transfer), correspondent bank number (identifying country, city and bank), name of payee and customer signature.

E. Secondary Records

In addition to the primary records specific to each transaction, secondary records are maintained. These include:

1. Customer Account Statement

A customer account details the history of a customer's account for a given period - on average a month. A duplicate copy of this account, known as a "buff copy" statement, is retained by the branch. Each statement is maintained for 10 years, thus there is a month by month history of a customer's account. This record is only available when the launderer maintains an account at the institution.

2. Account History Via Computer Access

The complete history of an account for the preceding 18 months can also be retrieved through the on-line computer system. This system identifies individual debits and credits as well as provides total amount for a given period of time, thereby possibly detecting large unexplained fluctuations in an account. Again this record is only available if the launderer maintains an account.

3. Journal Roll (Daily Summary Report)

The Journal Roll is a summary of all transactions that occur through a branch in one day. These reports are stored in a central warehouse for 3 years.

F. Analysis: Strengths and Weaknesses of Record-keeping Practices

There are strengths and weaknesses in the record-keeping practices of deposit-taking institutions for the purposes of financial investigation by law enforcement agencies.

1. Strengths

Records are maintained for all customers and all transactions, and in general the information is conducive to facilitating a financial investigation of a money laundering operation. Records are kept in hard copy and are usually backed up by secondary computerized sources.

In general, record-keeping throughout chartered banks and deposit industry is uniform. If cash is deposited into account, tellers are usually instructed to note the denominations. Moreover, some institutions have instituted internal currency transaction reporting policies which create a record for transactions over a certain amount and/or suspicious transactions.

Many deposit taking institutions have mechanisms which may potentially reveal laundering including daily, weekly and monthly reviews; reports that record transactions over $10,000; and reports that note drastic fluctuations in a customer account. These services can be beneficial in laundering investigation.

2. Weaknesses

Two pieces of information missing from records which could prove useful to money laundering investigations are: beneficial owner and denominations in which cash was received at the institution. There are little resources devoted to verifying the accuracy of information given by customers. Moreover, institutions still allow customers, with minimal identification, to conduct transactions without possessing an account at the institution.

The present means used to analyze customer aggregate data is geared toward identifying future marketing potential not towards identifying potential laundering schemes.

The time required to retrieve a document is also lengthy due to the combination of the volume of paperwork and an inefficient storage system.

The RCMP has expressed concern over a lack of uniformity of record-keeping practices among institutions and branches within institutions. A survey of the head offices and branches of various deposit institutions revealed discrepancies between standard practices with regards to such areas as: the recording of cash denominations if cash is used in transactions outside of deposits, currency transaction reporting requirements, and length of time records are stored.

VI. INTERNATIONAL RESPONSES TO COMBATTING MONEY LAUNDERING THROUGH FINANCIAL INSTITUTIONS: CURRENCY TRANSACTION REPORTING

Efforts to combat money laundering has taken many forms in different countries. One controversial initiative has been what is commonly referred to as "currency transaction reporting." The U.S. and Australia are presently the only two Western countries to implement a nationwide reporting system for currency transactions.

For the purpose of a comparative analysis, this section will examine currency transaction reporting as implemented in the United States and Australia and the role that American and Australian government regulatory agencies play in enforcing such regulations.

A. United States - The Bank Secrecy Act

The U.S. pioneered efforts to address money laundering through currency transaction reporting. In 1970 the Bank Records and Foreign Transaction Reporting Act, together with certain other provisions of law, commonly known as the Bank Secrecy Act (BSA), was signed into law.[20] The BSA provides requirements for record keeping and reporting by private individuals, banks and other financial and business institutions.

An essential factor leading to the passage of the reporting requirements, according to the U.S. Customs Service, was the desire to aid law enforcement in dealing with the problems being caused by the various bank secrecy laws enacted in bank secrecy countries: "The Act was created to help identify the source, volume and movement of U.S. currency and monetary instruments being transported into or out of the country or being deposited in financial institutions, and to use that information in investigations of criminal, tax, and regulatory violations" (United States, Department of Treasury, U.S. Customs Service, 1989 p. 2.).

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[20] Since the enactment of the Federal Bank Secrecy Act, several states, most notably Florida, Georgia and New York have enacted similar legislation.

More specifically, the objectives of the BSA are as follows:

- provide a mechanism to deter criminals from (or at the very least inconvenience them when) depositing or transacting in cash gained from illegal acts;
- create a source of information and paper trail, where none existed before, which can be used to detect and trace illicit money which has been invested in the legitimate financial and business communities;
- provide documentation which can be used as submissible evidence in the prosecution of criminal launderers in the court of law; and
- provide civil and criminal penalties, including fines, sentences and forfeiture for those who violate the Act.

The BSA can be broken into two general parts. The first part, codified in Title 12 of the United States Code (USC), requires that banks and financial institutions maintain certain records for a period of five years. The second part, codified in Title 31 of the USC, requires individuals, financial and business institutions to report certain domestic and foreign transactions exceeding $10,000.

1. BSA Required Currency Transaction Reporting Documents

As of 1989 amendments to the BSA, five types of financial transaction documents are required to be filed:

- Currency Transaction Report (CTR);
- Currency or Monetary Instruments Report (CMIR);
- Foreign Bank and Financial Accounts Report (FBAR);
- Cash Payments, IRS Form 8300; and
- Casino IRS Form 8362

i. Currency Transaction Report (CTR - IRS Form 4789)

A CTR is required to be filed by financial institutions for each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to, financial institutions which involves a transaction in currency of more than $10,000.

Once the form is completed, the financial institution is obligated to send form 4789 by the 15th day after the transaction is completed to the IRS Detroit Computing Centre. The information collected is then compiled into a computerized data base known as the Treasury Enforcement Communications System (TECS). The information can then be queried by IRS agents to facilitate money laundering investigations.

ii. Report of International Transportation of Currency or Monetary Instruments (CMIR - U.S. Customs Form)

A CMIR must be completed and filed with United States

Customs every time currency or monetary instruments over $10,000 are transported into or out of the United States.

iii. Report of Foreign Bank and Financial Accounts (FBAR - IRS Form TDF90-22)

A FBAR is required to be filed annually by individuals who have financial interest in or signature authority over bank accounts, securities, accounts or other financial accounts in a foreign country.

iv. Report of Cash Payments over $10,000 Received in Trade or Business (IRS Form 8300)

A report of cash payments over $10,000 received in a trade or business outside the realm of a financial service institution must be filed. Each person engaged in a trade or business who receives more than $10,000 in cash in one transaction (or a total of $10,000 in two or more related transactions) must file this form.

v. CASINO (IRS Form 8362)

By amendment, gambling casinos were included within the definition of financial institutions. Forms 8362 are required to be filed by a casino whenever a currency transaction exceeds $10,000.

2. Administration and Enforcement of the BSA

The Department of the Treasury has responsibility for administering the BSA and thus is responsible for monitoring and enforcing compliance and assuring that information generated by the reporting requirements are disseminated to law enforcement and regulatory agencies.

This authority to supervise compliance has been delegated by the Secretary of the Treasury to the following agencies:

- The Comptroller of the Currency for national banks and banks in the District of Columbia;
- The Board of Governors of the Federal Reserve System for all state member banks of the FRS;
- The Federal Home Loan Bank Board for insured savings and loan institutions;
- The Administrator of the National Credit Union Administration for Federal credit unions;
- The Federal Deposit Insurance Corporation for all other federally insured banks;
- The Securities and Exchange Commission for brokers and dealers in securities;
- The Commissioner of Customs, for reports of transport of currency across national borders; and
- The Commissioner of the IRS, for all other financial institutions set forth in the Treasury Department regulations.

The Assistant Secretary of the Treasury for Enforcement and Operations Co-ordinates the efforts of these above listed agencies and submits periodic reports to the Assistant Secretary. The Office of the Assistant Secretary for Enforcement by law has assumed the lead in prosecuting violations under the BSA. However, the IRS, Customs, DEA and FBI have been the most active in both investigations and prosecutions.

3. History of Enforcement of the BSA

Enforcement of the BSA and drug-related financial investigations in general, proceeded at a very slow pace throughout the 1970s. A combination of legal challenges and a variety of bureaucratic lags accounted for this.[21] The legal challenges involved not only the constitutionality of the Act but also disputes regarding the definitions of "financial institutions" and "monetary instruments," levels of proof, attempts to evade the law, timing of filing, who was required to file, and so on.

The bureaucratic lag revolved around the uncertainties concerning how the Act should be implemented, what should be done with the information collected, and how the information should be distributed. Finally, the ignorance and indifference of financial institutions to the requirements of the BSA, caused in part by the governments failure in fulfilling the potential of the Act. ("U.S. Failing to Catch Dirty Cash" Boston Globe, September 25, 1985, p. 1.) Not until the end of the 1970s did the Act begin to receive greater attention. Even then, law enforcement efforts lagged behind the rhetoric stressing the importance of financial investigations for successful prosecutions of drug trafficking organizations.

Connections between the spiralling drug problem in the U.S. and efforts to seize profits generated from this illicit business were accentuated. These developments led to greater attention by the General Accounting Office[22],

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[21] The principal legal case was California banker's Association v. Schultz, 416 U.S. 21 (1974), in which the Supreme Court held that record-keeping requirements of the BSA were constitutional.

[22] United States, General Accounting Office, GAO Report to the Congress: Bank Secrecy Act Reporting Requirements Have Not Met Expectations, Suggesting Need For Amendment (Washington , D.C. 1984)

Congressional committees[23] and internal agency auditors, all of which pointed out inadequacies in the law enforcement effort as well as problems with the Act itself.

In 1984, the President's Commission on Organized Crime picked the BSA as its first subject of inquiry[24] and many of its recommendations have been incorporated in subsequent amendments

Despite broad support for cracking down on the financial dimensions of drug trafficking, opposition to the broad sweep of proposed statutes was heard from many factions. Lawyers argued that the proposed legislation would greatly curtail their ability to represent criminal defendants and would infringe upon the attorney-client privilege. Bankers resisted the proliferation of new regulations. Foreign governments were angered by the explicitly extraterritorial applications of the proposed legislation.

The evolution of the BSA is also marked by the ever-increasing compliance rate by financial institutions. This cooperation can be explained in part as the reaction of banks to the well-publicized cases of financial institutions being heavily penalized under the BSA for failing to file CTRs. In 1979, just 121,000 forms were filed. In 1989 this figure had jumped to over 6.4 million.[25]

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[23] The most significant of the Congressional Hearings was conducted by the Senate's Permanent Subcommittee on Investigations, see: Crime and Secrecy: The Use of Offshore Banks and Companies: Hearings Before the Permanent Subcommittee on INvestigations of the Committee of Government Affairs, 98th Congress, 1st Sess. (1983)

[24] See Presidents Commission on Organized Crime: Organized Crime and Money Laundering (1984) Record of Hearing II, March 14, 1984. The first hearing did not focus on any specific theme, its purpose being to set the context for future hearings.

Since 1985, the U.S. Treasury Department imposed civil penalties amounting to over $20.5 million against 41 commercial banks, three savings and loan associations and one currency exchange house.[26]

The latter half of the 1980s witnessed a rash of Congressional amendments to the BSA to fill in loopholes and expand the coverage of the reporting requirements. These significant amendments included:

- increasing civil penalties from $1,000 to $10,000 for each transaction, for each day the violation continues, at each office, branch, or place of business where the BSA violation occurred.
- in addition to BSA compliance, suspicious transaction information of all types should be reported directly to federal authorities.
- requiring banking regulators to ensure financial institutions establish BSA compliance reporting procedures (The Anti-Drug Abuse Act of 1986).
- expanding the definition of "financial institution" to

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[25] 1979 figures derived from: Ethan A. Nadelmann "Unlaundering Dirty Money Abroad: US Foreign Policy and Financial Secrecy Jurisdictions" in Inter-American Law Review Vol. 18:1 (1986) pp. 40. 1989 figures supplied by the IRS - CTR Calender Year: Paper/Magnetic Tape Receipts (Form 4789).

[26] The Bank of Boston, civil penalty $500,000 (Feb.7,/85); Bank of America and BA Cheque Corp, San Francisco, civil penalty $4,750,000 (Jan 21, 1986); Oscar's Money Exchange, Texas, civil penalty $3,010,000 (July 29,/88). See The Interim Report by the President's Commission on Organized Crime: The Cash Connection: Organized Crime, Financial Institutions and Money Laundering, U.S. Government Printing Office, Washington, DC, October, 1984. See also Money Laundering Alert, Vol.1, #1, October, 1989.

include businesses such as automobile, airplane, boat, jewellery dealers, etc. under reporting requirements (The Anti-Drug Abuse Act of 1988).

- included casinos (Comprehensive Crime Control Act [1984]).
- amending Form 4789 making structuring or "smurfing" an illegal offence and raising to a felony the offence of structuring or aiding in structuring to evade IRS filing requirements on cash transfers (Title 26, USC Sec. 7203).
- allows Treasury to "target" specific financial institutions and impose on those institutions additional record-keeping and reporting obligations for renewable 60 day periods.

As Congress has begun to iron out the wrinkles and fill in the loopholes in the BSA, so have law enforcement agencies made progress in identifying and prosecuting money laundering operations through the assistance of the BSA. Sophisticated databases and artificial intelligence systems are being developed and administered through agencies created to address the problem of money laundering in the United States. In particular, the Financial Crimes Enforcement Network (FINCEN) was created to co-ordinate federal law enforcements effort to enforce the BSA.

Likewise, an emphasis has been put on assuring greater co-operation among federal law enforcement agencies to allow the BSA to be used more effectively to combat money laundering. Perhaps the most successful law enforcement approach to investigations under the BSA has been the multi-agency task force which is best epitomized by "Operation

Greenback" in Miami.[27]

4. Strengths and Weaknesses of the U.S. Currency Transaction Reporting System

The U.S. currency reporting system has both strengths and weaknesses. The weaknesses include:

- a small percentage of money laundering cases investigated and prosecuted actually involve the currency reporting system. It is estimated that on average only 17% of money laundering cases investigated by federal law enforcement is initiated by, or involves the currency reporting system required filings[28];
- the rate of compliance with the BSA is consistently gauged at below fifty per cent[29]. One might expect that the non-compliant 50% includes a higher percentage of money launderers, tax evaders and others whose transactions are in some way suspect;
- the BSA requires every financial institution to designate an employee to coordinate and monitor compliance on a day-to-day basis. This task often falls as a part-time responsibility to a junior employee which reflects the fact that some financial institution have taken the attitude that this is one more tedious paper-shuffling obligation;
- the American system which relies on the manual

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[27] For more on "Operation Greenback," see President's Commission On Organized Crime. The Cash Connection: Organized Crime, Financial Institutions and Money Laundering. (Washington, 1984.)

[28] Estimated figure supplied by the Financial Crimes Enforcement Network.

[29] Ethan A. Nadelmann, "Unlaundering Dirty Money Abroad: U.S. Foreign Policy and Financial Secrecy Jurisdictions" in Inter-American Law Review. Vol. 18:1., 1986, p. 41.

completion and submission of forms is cumbersome, inefficient and time-consuming. The financial/business institutions are allowed 15 days to file after which time the processing is claimed to take an additional 30 days. This means that there is a 45 day lag period before the files are available--even if the system is working as quickly as it can with no backlog;

- there are considerable costs involved. While U.S. Treasury maintains that the penalty fines and forfeitures more than pay for the system, there are costs to the financial institutions that are not counted;

- authorities have stated publicly that the most effective aspect of the system is the suspicious reports filed by the financial institutions. These can be responded to immediately by law enforcement without any delay and without the expense attached to the more massive reporting system;

- the preoccupation with enforcing the BSA may potentially detract law enforcement authorities from exploring other possible means to combat money laundering in the United States;

- There exists restrictions placed on the Treasury Department in transferring information to other regulatory agencies. The "agencies" empowered with ensuring compliance of the BSA do not necessarily have access to the information provided on the CTR and CMIR forms. An agency must have already begun a formal investigation on an offence before these data can be transferred to them. This ignores the fact that the information found in these reports might assist in the decision whether or not to conduct an investigation;

  This problem may become worse. FINCEN claims to be pulling together approximately 400 separate data-banks for analysis purposes. Already several of the main federal enforcement bodies are putting restrictions on what information they submit for fear of how wide-spread the access to such information may become;

- Regardless of the amount of data received, only so much can be processed and analyzed. There are insufficient resources within the IRS, DEA and FBI to investigate all referrals arising from filed transaction documents;

- Exemption lists may be a source of potential corruption for bank officials as well as a potential loophole for criminals. The authorities have instructed the financial institutions to create extensive exemption lists in order to reduce the burden of processing. Gaining a position onto one of these lists however is a tremendous advantage to criminals who can then complete financial transactions without the forms being filed;

- The presence of a currency reporting system may actually make the criminal launderer resort to more sophisticated laundering system (eg. smurfing, structuring). Structuring cash transactions became an offence in 1987, however it is still very hard to detect. U.S. police cases showed that launderers were dividing their transactions by manipulating the number of banks, number of branches, number of teller stations, number of instruments purchased, number of accounts, time periods between transactions and number of persons conducting the transactions. (Money Laundering Alert, Vol.1, #2, November 1989, P.8).

The strengths of the American system include:

- an additional source of information/records for investigations, intelligence analysis and prosecution;
- the erection of an inconvenience and possibly a deterrence to launderers;
- the dollar amount of funds forfeited are claimed to exceed the costs to the Treasury Department in administering the system;
- additional data to identify and prosecute tax evasion cases;
- politically, it has the appearance that "something is being done" to combat money laundering.

5. Regulation of the US Banking Industry

The role of banking regulatory bodies in combatting money laundering varies considerably from country to country. In Canada, Australia and Great Britain, the role of regulatory bodies is a minor one. In the United States, however, regulatory bodies play a central role in enforcing laws and regulations aimed at curtailing money laundering.

The regulation of the banking industry in the United States is shared by the federal and state governments. Within this shared jurisdiction, there are four government levels active in the regulation of banks: The Federal Deposit Insurance Corporation, The Federal Reserve Bank, The Office of the Comptroller of the Currency Administrator of National Banks, and state banking regulatory departments.

The efforts of these regulatory bodies to combat money laundering through deposit-taking institutions relies almost exclusively on enforcing and ensuring compliance with the Bank Secrecy Act (BSA) and more specifically with the filing of Currency Transaction Reports (CTRs). The responsibility for ensuring that banking institutions comply with the BSA is delegated from the Treasury Department to these government regulatory bodies.

The enforcement of the BSA by the regulatory bodies incorporates both the examination and investigative functions. The Office of the Comptroller of Currency has divided its BSA compliance examination into two tiers:

i. Bank Secrecy Act Compliance Examination (Tier I)

The responsibility for ensuring that a bank complies with the BSA is integrated into the annual and special on-site examination functions of the regulatory body. The objectives of the BSA compliance examination is to determine (1) whether the bank has established operating standards and audit procedures that ensure compliance with BSA requirements and (2) whether the established systems and controls enable management to assess compliance with the law and take corrective action when necessary.

It is important to stress that this examination does not analyze CTRs directly; this is done indirectly by ensuring that the bank has mechanisms to assess its compliance with the BSA. For example, the Office of the Comptroller of Currency and the New York State Department of Banking operate respectively a 19- and 15-point BSA compliance review. These reviews include such points as:

- a review of the bank's written policies, procedures and programs to ensure and monitor compliance with the regulations;
- a determination of whether an individual has designated the responsibility for coordinating and monitoring day-to-day compliance;
- a determination of whether the bank has established an employee training program on the requirements of the BSA;
- review of the bank's exempt customers;
- a determination of whether the bank has an internal audit function that evaluates the bank's compliance with the BSA; and
- a review of the cash totals shipped to and/or received from the Federal Reserve Bank in the last two months to assess whether any amounts shipped to the Federal Reserve Bank appear to be high compared to those reported on Form 4789 (the Currency Transaction Reporting Form) for the same period.

After the checklist is completed, the results are reviewed by the bank examiner. If the results "reflect significant violations and/or inadequate policies, procedures, training and audit function", the examiner is instructed to proceed to a Tier II examination (U.S. Office of the Comptroller of Currency [n.d.] p.10).

ii. Bank Secrecy Act Compliance Special Investigation (Tier II)

The objectives of this procedure "are to reach a conclusion about the adequacy of the bank's compliance system or to determine the causes of system weaknesses identified in Tier I or the extent of the problems and/or violations" (Office of the Comptroller of Currency [n.d.] p.12).

Tier II procedures and guidelines are more extensive and specific with regard to the testing for compliance with BSA regulations. At this stage, an examination will transcend a mere analysis of the bank's internal policies and will look at whether the bank is actually complying with the BSA. One to three branches of the bank are selected, and a minimum of five days of transactions of specific tellers within these branches are examined. The choice of branches and tellers is determined by the size of their currency transactions. The investigation ensures that CTRs are being filed and that there is no evidence of customers circumventing the $10,000 CTR limit, thereby indicating possible money laundering. If there is evidence of a felony offence, such as failure to file CTRs or money laundering, the investigation is turned over to the appropriate law enforcement agency.

An important component of financial reporting requirements is holding banks and bank officials liable for non-adherence with the law. U.S. banking institutions realized it was in their best interest to implement measures combatting money laundering and to strictly adhere to the Bank Secrecy Act only after there were several highly publicized cases where banks and banking officials were held personally responsible and penalized for non-compliance.[30]

B. Australia: Cash Transaction Report Act

A full description and evaluation of the Australian reporting system is not possible at this time since by January 1990 it was not fully in operation. However, tentative observations can be made based upon the legislation and supporting infrastructure.

The Cash Transactions Report Act was enacted on July 1, 1988. It was initiated by the Federal Attorney General to help the Australian Tax Office, as well as Federal and State law enforcement agencies, in the detection of tax evasion and criminal activity (Australia, Cash Transactions Reports Agency 1988, p.1).

The objective of this Act is to detect and monitor underground cash flows, and to deter money laundering by establishing reporting requirements and verification of identity requirements for the persons seeking to make transactions and obtain accounts (Zagaris, "Money Laundering," 1989, unpaginated).

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[30] The Bank of Boston, Chemical Bank, The Great American Bank, Garfield Bank and Bank America are among the most noted cases - See The Interim Report by the President's Commission on Organized Crime: The Cash Connection: Organized Crime, Financial Institutions and Money Laundering, U.S. Government Printing Office, Washington, DC, October, 1984.

Administration and enforcement of the reporting system is centralized in the newly-created Cash Transaction Reports Agency (CTRA). This agency consists of a director and a staff of qualified banking, computing, tax and law enforcement professionals. The CTRA began operation in February 1989 and expects to start processing data in 1990.

The CTRA has the following functions:

- receives CTRs from cash dealers and reviews transactions for which exemptions from reporting requirements are claimed;
- on transactions to and from Australia, receives and processes reports of certain currency transfers, either from Customs or the police;
- receives and reviews reports from cash dealers of suspect transactions and takes appropriate actions, such as referring the information for further investigation;
- performs functions concerning the verification of identities, such as controlling aspects of certain accounts with cash dealers that have been blocked by force of law as a result of inadequate verification, and receiving notice of accounts (with cash dealers) that have no primary identification;

  In addition, it collects, retains, compiles and analyzes information relating to the above, and disseminates it to relevant taxation and law enforcement authorities; and
- liaises with relevant authorities and with cash dealers, consults and cooperates with Commissioner of Taxation, and enforces certain provisions of the Act (Zagaris, "Money Laundering," 1989, unpaginated).

Unlike the U.S., the CTRA does not have the powers to audit banks and other financial institutions to ensure compliance with the legislation. Thus, while financial institutions are obliged by law to submit the information, there is no regulatory body with the mandate to ensure compliance (Coad

1989).

1. Legislative Requirements

The Australian legislation is based on the U.S. model, however, it attempts to address some of the deficiencies of the American system. The Cash Transaction Reports Act has six main requirements:

- to require "cash dealers" to report domestic currency transactions in excess of $10,000 (AUS) to the CTRA. Cash dealers include businesses operating in the financial services sector, such as banks, securities dealers, futures dealers, foreign currency exchange houses, bullion dealers, gambling casinos and bookmakers.

  certain exemptions apply to some transactions involving financial institutions; for example, routine business transactions relating to cash dealer operations, to certain established retail customers, and to vending machine companies. The financial institution must keep a register of those exemptions with specific details on each exempt customer. This exemption list is scrutinized by the government;

- to require the reporting of certain currency transfers to and from Australia in excess of $5,000 (AUS) to the CTRA;

- to require cash dealers to report suspect transactions whenever there exists "reasonable grounds to suspect" evasion of tax, offenses against the law, or proceeds from crime;

- to establish a CTRA to collect, retain, compile, analyze and disseminate information relating to cash transaction reports, suspect transactions, accounts with cash dealers and to perform other functions under the legislation in consultation with the Commissioner of Taxation;

- to impose obligations on cash dealers to verify the identity of persons seeking to open accounts or seeking to become signatories to existing accounts and to block withdrawals by unverified signatories to accounts which exceed certain credit balance or deposit limits; and

- to create an offence of opening or operating a bank account or similar account, with a cash dealer, under a false name (Bowen 1988, p.1).

Australian officials estimate that there are 1.5 to 2 million significant currency transactions in that country every year. However, if exempt categories involving transactions between financial institutions, or transactions with certain established retail customers, or routine payroll transactions are excluded, the figure is in the order of 500,000 to 600,000. Furthermore, it is estimated that the four major banks are likely to account for some 80 percent of all such transactions reported (Australia, Currency Transaction Reporting Agency 1988, p.7).

There are two broad categories of potential users of CTRA data: the Australian Taxation Office and law enforcement agencies.

The Australian Taxation Office can automatically access all the information collected by the agency and is likely to use the information for regular checks to detect cash income not being declared for taxation purposes, suspicious financial dealings that indicate tax evasion, and financial dealings that indicate illegal activity that results in tax evasion.

The law enforcement authorities that can use the information held by the Agency include: the Australian Customs Service, the National Crime Authority, the Australian Federal Police, and state police forces. The information is likely to be used in areas that may deserve enquiry, as an aid to evidence gathering in particular matters, and as part of the "general armoury" to facilitate bringing criminals to justice (Australia, Currency Transaction Reporting Agency 1988, pp.36-38).

2. Strengths and Weaknesses of Australian System: The On-Line Reporting System

While it is premature to assess the success of the Australian system, initial observations on its strengths and weaknesses can be made, especially when compared to the U.S. system. The clearest advantage is that the Australian model has an on-line reporting system which should greatly reduce the turn around time for the processing of the documents.

Like the American model, the Australian system will suffer from the structural deficiencies inherent in any type of currency reporting system. The use of nominees, corruption of bank officials, structuring of deposits and infiltrated of legitimate businesses by criminal enterprises who then gain access to the exemption list are easy ways to circumvent the system.

According to CTRA officials, this legislation is not meant to represent the panacea to the problem of money laundering. Instead, it is to augment other money laundering legislation such as the 1987 Proceeds of Crime Act.[31]

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[31] Australia, "Proceeds of Crime Act 1987, No. 87 of 1987.

C. A Comparison of U.S. and Australian Structures

The U.S. and Australian currency transaction reporting systems are conceptually similar. Each requires reporting of significant cash transactions conducted by financial institutions to be recorded and reported to a government agency that retains this information and makes it available to law enforcement and revenue officials.

The U.S. model is more specific on recording additional information concerning ownership of foreign bank accounts (Form TD F 90-22.1) and reports of cash payments over $10,000 received in a trade or business (Form 8300). Australia does not, as yet, have such requirements.

The Australian model differs from the American model with respect to information processing. In the U.S., data collection, preparation and processing are carried out by the two major user departments; the IRS and Customs, while a score of other regulatory bodies are charged with ensuring compliance with the BSA. In Australia, responsibility falls upon one central agency, the Cash Transaction Reports Agency (CTRA).

In the U.S., all data is submitted on paper. The US forms are completed and then physically sent to the IRS (or Customs) for processing. In Australia, the CTRA will capture the bulk of the data electronically via an on-line network (Australia, Currency Transaction Reporting Agency 1988, p.42). The Australians have opted for this method to overcome the delays incurring in compiling and processing the information in the U.S.

While both systems have equivalent provisions for exemption list registrars in financial institutions, in reality no such registrars are likely to exist in Australia as the information will be sent on-line as the transaction is being conducted (Coad 1989).

D. Currency Transaction Reporting: Implications for Canada

Based upon research into the U.S. and Australian currency transaction reporting systems, it is recommended that neither of these models be replicated by Canada at the present time. The U.S. CTR system:

- generates too much paper;
- results in too long of a delay in providing the information to law enforcement;
- provides too little evidence that it is valuable; and,
- is a costly and highly intrusive system.

Studies conducted into the effectiveness of the U.S. system indicate that the CTRs may, in some cases, help to verify police suspicions and may result in more money being seized but it falls short of the claims of alerting the police to new laundering situations or providing the missing evidence that results in a successful prosecution. The Australian model cannot be evaluated until it is fully in operation.

Both systems allow for the more direct reporting of "suspicious transactions." While U.S. officials often speak of having a mandatory suspicious transaction reporting system, in fact they do not. They have a mandatory requirement to report "suspected criminal activity" but they are merely encouraged to report on a voluntary basis "suspicious transactions." The U.S. Department of the Treasury "wants financial institutions to act as partners with Treasury in the fight against money laundering".[32] The line between suspected criminal activity, such as structuring transactions, and more general suspicious transactions may on occasion be fairly blurred. However, it does mean that officials have a criminal and civil legal responsibility to pay particular attention to certain activities that are defined in law, rather than having the legal responsibility to identify peculiar/suspicious transactions.[33]

The Australian Cash Transaction Reports Act (1988) places the onus on "cash dealers" to report suspicious transactions and makes it an offence to fail to do so. In the Australian model, suspicious transactions do not need to involve "cash" and there is no monetary threshold which limits what is reportable. Again, it is too early to evaluate this system.

Canadian banks have voluntarily put in place suspicious transaction reporting mechanisms and this should be encouraged more widely across financial institutions. A system that stands distinct from a more massive reporting requirement is likely to receive more careful attention by the financial community and a more timely response from law enforcement.

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[32] see Federal Register Vol. 53, No. 39, February 29, 1988 p.6011. U.S. federal politicians and law enforcement are both encouraging and coercing financial institutions to report not only transactions required to be reported under the BSA but also transactions it perceives to be suspicious. (see Controller of Currency Advisory Letter 88-5, October 26, 1988). In his first publicized speech as President of the United States, George Bush stated a primary focus of the enforcement effort towards money laundering would be directed at financial institutions used as laundering vehicles and punishments levied for those shirking this responsibility would be severe (Barcella Jr., 1989).

[33] Jonathan Rusch, Catholic University Law review, "Hue and Cry in the Counting-House: Some Observations on the Bank Secrecy Act" Vol. 37, Winter 1988, #2

While one is tempted to suggest that a more comprehensive examination of the success of CTRs is required, such a study might produce no more than is already known. Those who are committed to the system see it as essential to law enforcement; those who are critical or questioning do not receive convincing answers. The views of those working with the system in the United States vary depending upon whether they are speaking officially or informally and depending on which "user" organization they are from.

The supporting mechanisms, such as the FINCEN artificial intelligence system, are yet to be fully operational and therefore there is no basis yet to empirically evaluate the system. However, already various agencies are expressing concern as to the widespread use that might be made of their intelligence, and in some cases are questioning whether they will be contributing their sensitive intelligence to Fincen.

Any further evaluation that is carried out must do two things:

- separate "gains" in the form of mere fines collected for failure to file or otherwise comply with the CTR regulations, from a more relevant determination whether, or to what extent, the CTR system actually deters and/or detects illicit funds, and

- a determination whether this enforcement "gain" is commensurate with the intrusiveness of the system and the costs imposed upon the financial community.

What is desired is for the financial community to operate as true partners working with law enforcement and regulators to limit money laundering. Evidence from the U.S. indicates that a response to the legal requirements placed on the banks has been for them to report everything with little attempt being made to differentiate between the truly suspicious and the routine.

VII. CONCLUSION

Deposit-taking institutions represent a perfect vehicle to provide the legitimization of illicit money while maintaining anonymity for the criminal enterprise. As police cases demonstrate, this fact is all too clear to the criminal enterprise. In dollar amounts of money laundered as well as measured by separate laundering cases, deposit-taking institutions outnumber all other laundering vehicles combined. Therefore, any efforts taken to stem the flow of illicit money in Canada, whether preventive or reactive, should concentrate on the deposit-taking institution.

There are inherent strengths and weaknesses in the measures pursued by the deposit-taking industry and regulators with respect to assisting the efforts of law enforcement in combatting money laundering.

On the positive side, Canadian banks have formally adopted policies and procedures which outline the steps bank personnel are to take when confronted by a suspicious transaction. Chartered banks have the been the most active in referring suspected money laundering cases to the RCMP. Moreover, chartered banks have developed comprehensive staff awareness programs which target the services used in the laundering process such as denomination exchanges, currency exchanges and electronic wire transfers.

To aid criminal investigations, suspicious activities are routinely turned over to enforcement agencies by security divisions of the banks. Institutions have recently demonstrated a willingness to alter record-keeping policies and practices to better facilitate money laundering investigations.

In addition to money laundering initiatives, the routine policies of Canadian banks are conducive to deterring, detecting, tracing and facilitating the forfeiture of illicit funds. These routine practices include daily, weekly and monthly branch reports, internal audits, tellers reports to supervisors for cash transactions above a certain amount, and powers to freeze accounts.

Despite these strengths, there remains weaknesses within the efforts made by Canadian deposit-taking institutions to counter money laundering. The chartered banks have based much of their money laundering efforts on the principle of "know your client;" however, the value of this principle is severely weakened by the large volume of customers a branch services on any given day.

Law enforcement efforts may also continue to be handicapped by the continued adherence to the principle of strict bank-client confidentiality as well as secrecy in the operation of branches in tax haven countries.

While individual institutions have voluntarily notified law enforcement about suspicious deposits, their policies appear to be aimed at what has been called "keeping their own hands clean, rather than help(ing) police track down criminals" (Simon 1985, p. 3). In other words, while the "big five" chartered banks and national trust companies have increased awareness and security to combat money laundering, criminals deterred from these institutions will simply frequent other sectors of Canada's business and financial community which have done very little in the way of combatting money laundering. These criminals could turn to smaller trust companies and credit unions which lack the security resources available to larger institutions. At present, the greatest weakness lies at the level of the regional and one-branch trust company and credit union.

Within the Canadian chartered banking community, awareness of the problem of money laundering is very high. The Canadian Bankers' Association and the individual chartered banks have led the way in developing policies and procedures to combat money laundering. However, while the efforts put forth by the banking community should be acknowledged by law enforcement and emulated by other financial institutions, it is premature to gauge the overall effectiveness of these policies in deterring and detecting illicit money.

There is little doubt that the commitment to combat money laundering by the Canadian chartered banking community is a sincere one. At the same time, however, the banking community appears to be caught in a moral dilemma. On the one hand, it firmly believes that they are bankers and not police and thus should act in the best interests of their customers. On the other hand, they recognize their commitment to act as good corporate citizens.

National trust companies have also taken steps to address the problem of money laundering. However, these efforts have not been replicated by the industry's professional association nor by the smaller trust companies.

Individual credit unions have failed to develop policies and procedures. Their inaction is based on the belief that money laundering cannot take place at their institutions. This belief, however, has been refuted by documented police cases. Industry associations, such as national and provincial credit union centrals, have begun to fill this void by recognizing and taking steps to deal with the problem of money laundering.

All trust companies and credit unions within Canada must emulate the steps taken by the chartered banks to combat money laundering, including, drafting policy and procedures, educating staff, revising record-keeping to facilitate detection and investigation of money launderers and signing memoranda of agreement with law enforcement.

Professional associations, especially the CBA have played an integral role in combatting money laundering. These efforts must continue in the future for it is imperative that all members of an industry, enact uniform anti-money laundering provisions. It is central to the responsibilities of the professional associations to ensure that all institutions are covered and that uniformity within the industry exists.

The records retained by deposit-taking institutions are adequate for the purposes of an investigation and prosecution. However, key information is missing which can and should be added. The main focus for improving record-keeping should be threefold: 1) adding information to existing records to make them more conducive to facilitating a laundering investigation; 2) tailoring existing record-keeping practices to identify possible laundering operations; 3) augmenting existing record-keeping practices with new records.

The role of regulatory bodies in combatting money laundering has lagged behind the efforts of the industry. While awareness of the issue is high among regulatory personnel, efforts to combat the problem have been, at best piecemeal, and at worst, entirely absent.

The federal Office of the Superintendent of Financial Institutions' (OSFI's) "Best Practices Paper" detailing specific measures to combat money laundering at deposit-taking institutions is perhaps the most significant contribution to combatting the problem. Some provincial regulatory agencies have adopted this paper as a model for the developement of policies regarding money laundering within their industries.

While all regulatory bodies are equipped with legislative powers to examine, gather intelligence and investigate, these powers must be combined with an awareness, education, vigilance and desire to combat money laundering. In other words, the ineffectiveness of regulatory bodies to date lies not in the legislation, but in the mandate of the regulatory bodies themselves.

It can certainly be argued that guarding against such illegal offenses as money laundering would fall within the regulatory parameters of government bodies monitoring deposit-taking institutions. This derives from the fact money laundering has potential implications on the solvency of a financial institution as well as the protection of both the legitimate customers of a deposit-taking institutions, and the public as a whole.

Federal and provincial regulatory bodies have great potential to promote the efforts of law enforcement in the deterrence, detection and tracing of illicit money. These efforts must be consistent and involve substantive measures to curtail money laundering.

The role of regulatory bodies in combatting money laundering must incorporate both a proactive and reactive initiatives. Proactively, their role should be to ensure that institutions comply with proper record-keeping requirements and assist banking officials in the review of records which may identify laundering and/or facilitate an investigation. In short, proactive means can be incorporated in existing compliance examinations.

Reactively, regulatory bodies must incorporate anti-money laundering provisions into their investigative functions. With referrals from deposit-taking institutions increasing daily and the inability of law enforcement to investigate every referral, the regulatory body can play an integral role in screening out those referrals that are not in fact criminal cases. Through this investigative role, regulatory bodies will be able to facilitate law enforcement while still legally remaining in its administrative jurisdicition.

If the industry is to make a concerted effort, there should be an uniform policy throughout Canada developed by the industry in conjunction with federal and provincial governments, regulatory bodies and law enforcement. This policy should be enforced and individual institutions monitored on their adherence to such a policy.

The U.S. and Australia, in their attempt to combat the problem of money laundering through deposit-taking institutions, have emphasized different initiatives from those pursued in Canada and elsewhere internationally. They have stressed a reliance on currency transaction reporting.

However, it is not wise to attempt simply to replicate in Canada, a system developed elsewhere. Systems that may be seen to be required in one country might be inefficient in another depending on the banking and law enforcement mechanisms in place.[34] There is also a danger of ignoring the aspects of the Canadian regulatory and enforcement structures that in fact produce the benefits claimed by more cumbersome and more intrusive mechanisms.

"Experimentation" is difficult. Once these systems become established, the resources expended and related political concerns, may make it impossible for countries to acknowledge the flaws that exist.

For example, from all of the evidence available it appears that despite the CTR system in the United States, the onus still remains predominately with the traditional security functions of financial institutions as embodied in the "know your client rule" with provisions to report to law enforcement "suspicious" transactions.

Therefore, despite the sophistication of the reporting procedures or the all-encompassing abilities of the computerized analytical systems, there is increasing awareness that even more onus must be placed on financial institutions and regulatory bodies to increase their role in the "front lines" in the battle against money laundering.

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[34] For example, the Australian banking system, with 80% of the major transactions going through four major banks and generating a potential of 500,000 to 600,000 transaction forms is more similar to the Canadian situation than is the American banking system with some 15,000 individual state and national banks generating 6 million CTR forms.

CHAPTER TWO

MONEY LAUNDERING AND CURRENCY EXCHANGE HOUSES

I. INTRODUCTION

Within the financial services sector, currency exchange houses are second only to deposit-taking institutions as laundering vehicles. One exchange house in Toronto, for example, was identified as assisting in the laundering of over $20 million within a five-year period (Canada, RCMP case files).

The services offered by currency exchange houses are very attractive to money launderers because they satisfy the inherent goals of money laundering: the concealment of illicit funds and conversion to other assets to disguise their illegal source.

Canadian currency exchange houses vary in size from small single-office operations to multinational corporations with numerous branches across the country. The range of services offered varies with the size of the operation but may include:

- cash-for-cash currency exchange;
- electronic wire transfers conducted by the exchange house through banks for the client; and
- the issuance of negotiable instruments such as traveller's cheques, bank drafts, cashier's cheques and precious metals.

Through currency houses, launderers can convert large quantities of illicit money into U.S. currency or other negotiable financial instruments such as certified cheques, bank drafts, traveller's cheques and bearer cheques payable in U.S funds. Moreover, as police cases reveal, the lack of industry regulation has allowed criminal enterprises to incorporate their own currency exchange houses to facilitate their laundering activities.

For this study, exchange houses are divided into two categories: "minor" and "major." The size of the services offered by these companies vary from small over-the-counter exchanges of Canadian and American currencies, to the sale, purchase, and transfer of large sums in most of the world's currencies.

A. Minor Currency Exchange Houses

The "minor" exchanges include small currency exchange houses as well as small businesses in which currency exchange is a secondary service. Examples of this latter type of operation include flight insurance companies located in airports and convenience cheque-cashing operations.

The characteristic common to all the minor exchanges is the limited scale of their operations. In general, they confine their transactions to Canadian and American dollars. They rarely engage in more complicated international financial transactions nor do they facilitate the issuance of bank drafts or the electronic transfer of funds.

B. Major Currency Exchange Houses

The "major" currency exchange houses specialize in foreign currency exchanges and are found in tourist and business areas of major urban centres in Canada. The profit margin on each transaction is much smaller than that of the minor exchanges, but the average size of each transaction is many times greater. Most major exchanges serve foreign tourists, Canadian travellers and corporate customers.

Most of these currency exchange houses can conduct individual cash transactions in excess of $100,000 (CDN). These companies also act as the liaison between their customers and banks to provide electronic wire transfers of funds to foreign banks as well as to issue domestic and foreign bank drafts to their branches in other countries. Many of the larger exchange companies rival the chartered banks in both the volume and complexity of the international financial services offered.

II. POLICE CASE ANALYSIS

An analysis of police cases reveals that the primary and secondary services offered by currency exchange houses are important vehicles for the laundering of illicit money and are often used in conjunction with other financial institutions, especially deposit-taking institutions.

It is apparent from some of the police cases that certain exchange houses in Canada quite deliberately seek to attract criminal customers with illicit funds that must be laundered. For example, some of the cases illustrated that the exchange house applied different interest rates to their customers depending on the legitimacy of the money being exchanged.

Likewise, one exchange house had a "back-door" system for receiving large amounts of the small-denomination drug currency. In other cases the exchange house may have been the unwitting "partner" in the laundering scheme.

Police cases also show that cases involving the laundering of illicit money through currency exchange businesses share common characteristics with other laundering vehicles. The use of money couriers ("smurfs") and the establishing of respectable fronts through companies or lawyers are two examples. Launderers have utilized currency exchange businesses as deposit institutions, including the deposit of cash, and purchasing and cashing negotiable instruments. The analysis indicates that criminals have easy access to the services of currency exchange houses in Canada.

Finally, police cases indicate that money launderers have incorporated currency exchange businesses and, concomitantly have opened bank accounts in the name of a currency exchange house.

A. Type of Institution Favoured

Police cases reveal that criminal launderers prefer to use the services of major currency exchange houses. The on-hand cash reserves of minor exchanges are generally limited and thus are a constraint in exchanging large amounts of cash.

Many major currency exchange companies, on the other hand, can conduct transactions in the hundreds of thousands of dollars. Therefore, the amount of cash available, the array of services offered, and the lack of documented identification are all useful to launderers.

B. Type of Services Favoured

1. Cash-for-Cash Currency Exchange

The principal service offered by a currency exchange house--the conversion of one currency into another--is a very useful vehicle for the laundering of proceeds of crime.

Currency exchange also provides the money launderer with an opportunity to exchange many small bills for a smaller quantity of large denominations. This procedure produces a less conspicuous quantity of cash and can be performed concomitantly with the currency exchange.

For laundering purposes, police cases reveal that most illicit Canadian cash is converted to American dollars-- the international currency standard. In addition, police cases reveal that many cash-for-cash currency exchanges lead to the physical transportation of the illicit funds.

Two RCMP case files of large laundering operations illustrate the use of exchanges to obtain U.S. funds:

> In the early 1980s, a criminal enterprise incorporated a currency exchange house which retained the services of couriers to move large quantities of cash as part of a $55 million (CDN) laundering operation. Cash was usually transported to the U.S. or to a tax haven country (Canada, RCMP case files);
>
> In 1986, a man suffered a fatal heart attack on a train travelling from Montreal to Vancouver. Found in his possession was $3 million in U.S. currency and gold wafers. This person had a history of being involved in criminal activity and had previously worked as a courier for the currency exchange house. Shortly after his death, the company made a claim on the money but could not provide adequate explanation as to the source of the funds (Canada, RCMP case files).

2. Negotiable Instruments

Police cases show that money launderers make use of other services offered by currency exchange houses such as certified cheques, bank drafts, traveller's cheques and bearer cheques. The purchase of these negotiable instruments also allows for the exchange of large quantities of small denominations of cash into a less suspicious monetary instrument.

3. Electronic Wire Transfers

Money launderers also use the electronic wire transfer service offered by the larger exchange houses. This service allows for the transfer of funds into a bank account of either the exchange house or of a limited company incorporated by the criminal enterprise in a tax haven country.

While exchange houses do not have the capabilities to transfer the funds directly, they act as the intermediary between the exchange house customer and the bank. The credibility of the exchange house serves to shield the customer from the questions, forms and identification requirements of the major banks.

C. Controlling a Currency Exchange House

Police cases show that launderers will incorporate currency exchange companies to facilitate their laundering activities. The exchange house can either operate as a store-front operation that claims illicit funds to be the profits generated by the exchange business, or it may operate as a valuable link in a larger laundering scheme. The RCMP case file on Gary Hendin perhaps best illustrates this latter example:

> A lawyer for an Ontario-based organized crime syndicate incorporated a "shell" currency exchange company. The sole purpose of this company was to launder large amounts of illicit cash for an organized crime syndicate.
>
> By establishing accounts in local bank branches under the company's name, the launderer would make sizable deposits of small denominations of Canadian currency and purchase large amounts of American cash. The nature of the currency exchange business, combined with the lawyer's upstanding reputation in the community, ensured these transactions would evade any suspicion and/or scrutiny.
>
> During 1979-80, the launderer purchased close to $9 million (US) from the Marine Midland Bank in Buffalo, New York. Most of the Canadian cash used to purchase these funds was drawn from the currency exchange company's bank account. (Canada, RCMP case file).

III. GOVERNMENT REGULATION AND CURRENCY EXCHANGE HOUSES

There are no federal or provincial government bodies which monitor currency exchange companies nor is there any legislation that governs currency exchange in Canada. However, this was not always the case.

At the beginning of the Second World War, currency exchange in Canada was strictly regulated. Orders-in-Council passed under the War Measures Act (R.S.C. 1934, c. 206) established the Foreign Exchange Control Board. This Board oversaw the movement of all foreign reserves in Canada to regulate Canada's balance of payments and to maintain a stable dollar. Exchange rates between currencies were fixed by the

Board, and a complete prohibition was imposed on the use of U.S. dollars for pleasure travel in the United States.

In 1946, the Foreign Exchange Control Act (R.S.C. 1946, c. 53) was passed in order to make statutory these wartime Orders-in Council. Sections which regulated the movement of foreign currencies and their respective rates of exchange were eliminated when this act was repealed in 1952, (Currency, Mint and Exchange Fund Act, R.S.C. 1952 c. 315, s.30).

Since this time, no new controls have been instituted to govern the movement of foreign currencies in Canada.

Further, as of September 1990, there are no regulations on record-keeping. As a result, the currency exchange industry has no uniform record-keeping procedures, which in turn obstructs any laundering investigation by law enforcement.

The implications of the regulatory vacuum within the currency exchange sector are immense:

- without government regulation, the industry is attractive to criminal customers who wish to use the services of legitimate exchange houses. Moreover, the lack of regulation allows the criminal element easy access to incorporating such businesses to help their illegal laundering operations;
- this lack of government regulation is occurring in an environment of minimal industry self-regulation and, more specifically, little scrutiny of clients. As the currency exchange industry is in direct competition with chartered banks, trust companies, credit unions and brokerage firms, there is a pragmatic tendency to avoid any type of customer scrutiny for fear of losing business.

IV. IDENTIFICATION PROCEDURES

Identification requirements is arguably the single most important mechanism which can be employed at individual exchange houses to combat money laundering. First, it can serve to deter money launderers who are uneasy about revealing their identity. Second, identification can be recorded, thereby assisting a future proceeds of crime investigation by law enforcement.

As part of this study, a telephone survey of the identification procedures of both minor and major currency exchange houses was conducted.[1] It revealed that identification requirements at the majority of exchange houses are lacking and where they do exist they are easily circumvented by the criminal launderer. This void is aggravated by the inadequate record-keeping of most currency exchanges companies. Few currency exchange companies have acknowledged the problem of money laundering. Thus, there is a lack of company policies in this area, and little staff awareness of, or training in money laundering techniques. This situation presents great difficulties for the preventive and reactive efforts of law enforcement to combat money laundering at currency exchange houses.

A. Minor Currency Exchange Houses

A survey of minor currency exchange houses revealed there

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[1] Since there is no umbrella organization to report on the identification procedures across the exchange industry, this survey was an attempt to sample the existing procedures. The random sample was chosen to provide some indication of the consistency within the industry. For a listing of the respondents see Currency Exchange Companies Contacts, at the end of this report.

are no standard identification practices in this segment of the currency exchange industry.

Some minor currency exchanges require identification for transactions exceeding a certain amount. This amount varies from $500 to $10,000 (CDN). A form must be completed which records the customer's name, address and phone number, and identification must be proved by presentation of documents such as a driver's licence number, credit card number and passport number. Other companies require that all transactions be accompanied by the customer's name, address and signature, but do not require that the identification be verified by personal documents. Still other companies require no information from a customer, nor do they issue a receipt for the transaction.

One currency exchange house indicated that a declaration of source of funds be completed, although there was no follow-up to verify the accuracy of such information.

B. Major Currency Exchange Houses

A survey of major exchange houses in Canada revealed that most do not ask for identification and thus no customer records are maintained. Only three of the major currency exchange houses surveyed require documented identification for transactions over a specific sum: Deak Canada (on transactions over $1,000), Station Currency Exchange of Windsor (on transactions exceeding $10,000) and Remo Exchange of Vancouver (on transactions exceeding $10,000). These companies require two pieces of documentation such as a passport, driver's licence, credit card, or picture identification. Documentation is also required for bank drafts and electronic wire transfers above a specified dollar limit. In addition, other companies require information about the payee of the transaction. Other major exchanges make a record of the name, address and telephone number of the customer, but this is not necessarily verified by identification documents.

In sum, the survey revealed that most major exchanges in Canada do not require identification documents for cash transactions. Thus, the only record of a cash transaction would be the sum involved, the name of the payee and the destination of the funds. Deak Canada is an exception to the rule with regard to record-keeping in the currency exchange industry. At this company, identification information is stored on a computer system which operates in all their national branches. This system records the customer's name, address, credit card number, or passport number. It is possible to retrieve information on when and where the transaction took place and customers also receive a computer-generated receipt.

V. CONCLUSION

Whether offered by deposit-taking institutions or exchange houses, cash-for-cash currency exchanges and other related services are an effective means to launder the illicit proceeds of crime. Currency exchange houses can serve both as the main laundering vehicle as well as a link in a more sophisticated worldwide laundering chain.

A survey of currency exchange houses conducted for this study reveals there are no standard identification practices among the minor exchange houses, and most major exchange houses do not require identification, verify information provided, or maintain transaction records.[2]

The lack of record-keeping at most exchange houses, combined with the absence of government regulation, ensures that both preventive and reactive efforts to curtail laundering at these institutions are severely limited.

The type of financial transactions performed by currency exchange houses and the potential for unethical and illegal use requires that this industry receive regulation similar to other sectors of Canada's financial services industry. These regulations should address the specific problem of money laundering.

This government regulation should also be accompanied by an increased emphasis on training to alert the legitimate exchange houses as to how they might presently be used by launderers and a requirement that there be uniform and adequate records maintained by this industry. The current records that merely document the amounts of "cash-in" "cash-out" are inadequate.

The need for government regulation as well as increased diligence on the part of individual exchange houses takes on increased importance as criminal launderers gravitate away from institutions with strict security, such as deposit-taking institutions, to those institutions with little or no security, such as currency exchange houses.

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[2] Some companies, however, have implemented identification requirements which, while not directed towards money laundering, are an important potential mechanism to deter money laundering.

CHAPTER THREE

MONEY LAUNDERING AND THE CANADIAN SECURITIES INDUSTRY

I. INTRODUCTION

Police cases indicate that the securities industry is regarded by criminal enterprises as an attractive vehicle for the laundering of the proceeds of crime. The principal service offered by the securities industry--the investment of funds into stocks and bonds--satisfies the premier objective of the laundering process for drug traffickers: the conversion of illicit cash into an alternative financial instrument. Despite the fact that cash is rarely used in legitimate securities transactions, police cases demonstrate that the cash proceeds of crime are being invested into the securities market.

A second objective of the laundering process involves the concealment of any association between the laundering vehicle and the criminal enterprise. While most brokerage firms in Canada are required by industry regulations to reveal the beneficial ownership of nominee accounts, the nominees of criminal organizations can circumvent this requirement by posing as the legitimate investor or spuriously reporting a non-criminal beneficial owner. As long as accounts are not overdrawn and the nominee avoids any semblance of suspicious activity, there is little reason for a brokerage firm or securities regulator to inquire into the individual or corporation behind the account. Launderers may also seek anonymity by investing in securities through third parties such as, for example, registered investment counsellors, investment advisors, chartered banks and trust companies. Finally, the ongoing internationalization of the securities industry has meant that international tax haven countries are now frequently being used by legitimate investors. Thus a launderer seeking anonymity may use such mechanisms as a tax-haven registered shell company as a guise through which investments into securities can be made while attracting little suspicion.

The third objective of the laundering process involves the creation of a seemingly legitimate source for the illicit funds. Transacting in securities incorporates an added attraction to the launderer in that the alternative asset is highly liquid. The ability to liquidate investment portfolios containing both lawful and illicit proceeds, while concealing the criminal source of the latter, allows the sophisticated criminal launderer the opportunity to claim a legitimate source of wealth.

II. POLICE CASE ANALYSIS

An analysis of police cases involving money laundering and the Canadian securities industry reveals the following salient characteristics:

A. Securities Violations and Money Laundering

Police cases demonstrate that profits generated from traditional securities-related illegalities, such as insider trading or market manipulation, will in turn be laundered through securities investments:

> The principals of a publicly-listed company were involved in the fraudulent manipulation of stock as well as theft and fraud of the company's assets and

> treasury. The proceeds from the manipulation, which were realized as funds located in trading accounts indirectly controlled by the principals, were seldom paid out to the principals by the brokerage firms. Instead the funds were converted to shares of different companies, including ones involved in movie production, medical technology and securities brokerage. Further investigation revealed that these companies were in turn headed by the same individuals who manipulated the price of the securities (Canada, RCMP case files).

The laundering of profits generated from securities infractions will often take advantage of the same processes and vehicles utilized in the original crime:

> During the mid-1980s, Edward Carter and David Ward manipulated, through 100 trading accounts distributed among 15 brokerage firms in Canada, the U.S. and the Cayman Islands, the shares of 19 public companies listed on the Vancouver Stock Exchange. In addition, Carter and Ward paid secret commissions to the portfolio manager of an American-based mutual fund in return for his purchase of large volumes of stock in the target companies.
>
> Many of the trading accounts were registered in the name of beneficial owners and numbered companies incorporated in the Cayman Islands. One of the accounts Carter utilized to sell stock to the Mutual Fund was located at the Cayman Island branch of the Canadian brokerage firm Richardson Greenshields Ltd. This account was in the name of the Cayman Island branch office of the Royal Bank of Canada, and it was used for more than just the manipulation of the target companies' securities.
>
> Through this account such investments as silver and gold bullion, Government of Canada Bonds, U.S. Treasury Bills and a number of blue chip securities were purchased. In short, by funnelling the illicit proceeds of Carter and Ward's market manipulation into commodities and other securities, this trading account was utilized as a central laundering conduit.
>
> It is estimated that over $15 million (CDN) in illicit profit was generated through the manipulation of these shares and mutual funds which in turn was laundered through securities and other vehicles (Canada, RCMP case files).

The Carter/Ward case serves as a microcosm for the laundering of illicit proceeds generated from securities manipulation. Cases reveal that mechanisms which facilitate securities infractions, such as the involvement of tax haven countries, the use of nominee accounts and shell companies, the involvement of lawyers and banking institutions and the a diverse range of securities are all conducive to the laundering of the proceeds of these illegalities.

The laundering of the proceeds generated from securities infractions deviates from the strict definition of money laundering in that the proceeds of such illegal activities will often not assume a cash form. As a result, the requisite for the conversion of cash into an alternative asset does not apply under these circumstances. However, the objectives of concealing the source of funds and criminal ownership and the creation of a seemingly legitimate source of funds remains a critical component of the laundering of proceeds of securities infractions.

B. Cash Investments

Unlike the proceeds of securities infractions, police cases reveal that the illicit profits of the drug trade are invested into the securities market in cash:

> A drug trafficker invested in a number of different blue-chip securities which were traded on both Canadian and American exchanges. He often entered the office of the brokerage firm with large quantities of cash which were then deposited into his trading account. A subsequent investigation revealed thousands of dollars worth of security certificates and cash in a safety deposit box (Canada, RCMP case files).

Criminals will invest illicit money in various types of securities, including mutual funds:

> A lengthy police investigation showed that a Canadian drug trafficker had purchased securities through brokerage houses to launder his illicit profits. For example, he invested $15,000 cash in mutual funds through his father-in-law who operated an Ontario investment firm (Canada, RCMP case files).

C. Brokerage Firms

Criminals laundering money through the securities market will most often utilize the services of a brokerage firm to facilitate their transactions. The advantages of using a brokerage firm is grounded in not only its position as the chief point of entry into the stock market, but also in its ability to operate as a quasi-deposit-taking institution.

The first step in the laundering process involving a brokerage firm is the opening of a trading account. This enables the trafficker to deposit illicit funds:

> An Edmonton drug trafficker, deposited $10,000 in cash with a branch of brokerage firm, Wood Gundy Ltd. (Canada, RCMP case files).

Once funds are deposited in an account, the launderer is able to transact in the securities market. In addition, the launderer can also use the brokerage firms as a medium to purchase monetary instruments:

> The branch of the Canadian Imperial Bank of Commerce at Portage and Main in Winnipeg reported to police that a customer had walked into the bank branch with a suitcase full of cash and tried to purchase a bank draft for $81,500 (CDN) with $50 and $100 bills. He requested a bank draft payable to himself which he received after the money was counted. Bank employees, suspicious of this transaction, then notified the police who followed the customer to a branch of brokerage firm Richardson Greenshields where he cashed the draft and obtained a cheque payable to himself for $59,467.35 in U.S. funds. He then took the draft to the Royal Bank at 220 Portage Avenue and converted the

> draft to U.S. currency. A subsequent investigation revealed the subject performed the same transactions the previous week with $25,000 (CDN). It soon became evident that the subject was acting on behalf of a close friend who was known to be an active drug trafficker (Canada, RCMP case files).

Brokerage firms can also be used by to transfer illicit funds internationally:

> Vincent Patrick Smith, an Edmonton drug trafficker, opened a trading account at a local office of brokerage firm Merrill Lynch. Smith deposited large sums of illicit funds into the account until one day he advised the brokerage office that he was moving to Miami. Smith then asked the brokerage firm to transfer his Edmonton-based account to a Merrill Lynch branch office in Miami. Merrill Lynch complied with this request. Once the trading account was transferred, Smith flew to Miami and closed out the account. Smith received a cashiers cheque from the brokerage firm which was then used to purchase drugs in the Southern Florida area (Canada, RCMP case files).

When using brokerage firms to launder the proceeds of crime, there exists a multiplicity of routes which range from the simple to the sophisticated. In Fleecing the Lamb (1987) Cruise and Griffiths detail one hypothetical example of a sophisticated method of laundering via securities purchased through trading accounts established at brokerage firms:

> A "master" trading account is registered in the name of the individual who is to receive the laundered money. Only seemingly legal funds, such as money borrowed from a bank, enters this account. Such money could be loaned by an overseas bank owned by a criminal organization. Money from this account is used to buy a substantial interest in a listed shell company or to underwrite cheap stock. The shares are acquired over a long period and held to avoid suspicion. Nominees then open a multitude of trading accounts with illicit money at a number of brokerage firms. As long as each nominee holds less than 10 percent, no insider trading reports need be filed. The master account slowly makes blocks of stock available which are purchased by the nominees through their various trading accounts. The aim of the master account is to remove a dollar of clean money for every dollar of dirty money used by the nominees.
> A one-for one trade between clean and dirty money is

> considered excellent in the laundering business, and any profits are a bonus. With any luck, a real market will be generated by this buying and selling activity, and public buying will elevate the stock further or keep it up long enough for the master account to make a profit (Cruise and Griffiths 1987, p. 216).

D. Concealing Criminal Ownership

One of the necessary components in any successful laundering process is to conceal any association between the criminal owner and the laundering vehicle. Police cases involving the laundering of the proceeds of crime through brokerage firms reveal various means to satisfy this requisite.

One of the most effective means to cloud the true criminal ownership is to use nominees or "smurfs":

> A Windsor, Ontario drug trafficker invested $37,000 in the stock market by establishing a trading account at a local office of a brokerage firm. He had a nominee establish the account in the name of the nominee and subsequently had this individual deliver cash to the brokerage firm. Further investigation revealed that he used "smurfs" for all his laundering activities (Canada, RCMP case files).

By using a number of smurfs, not only is criminal ownership concealed but a large amount of illicit funds is spread out in a number of investor and trading accounts thereby avoiding the added scrutiny of large investments.

The launderer may assume different identities:

> An individual long connected with organized crime in Quebec invested in securities throughout a number of brokerage firms in the province. The launderer would establish trading accounts under an assumed identity. In total, it is estimated that the criminal utilized 20 different identities. During a six year period, it is estimated that over $2 million was laundered in this manner (Canada, RCMP case files).

As long as a criminal has access to fake identification and numerous offices of brokerage firms, this method of concealing ownership can prove to be effective.

Launderers will also utilize shell companies as a guise through which trading accounts are registered:

> A cocaine importer established a trading account under the auspices of a front company. This company conducted no legitimate business except to conceal the criminal ownership of the funds (Canada, RCMP case files).

Finally, stock purchased in a company may be kept in bearer share form to retain anonymity of ownership:

> Illicit funds previously invested in a bank account within a tax haven country by the launderer of a drug trafficking organization were repatriated to Canada under the guise of advances for stock purchases of Canadian companies. Much of this investment was kept in bearer-share form. The investments were made with a cheque drawn on an tax haven bank account registered in the name of a shell company (Canada, RCMP case files).

If a certificate is in bearer form, it can be cashed at most banks by anyone in possession of it, provided they have sufficient identification. In Canada, public stocks, for the most part, are not issued in bearer form. However, warrants and government coupon bonds usually are in bearer form. These types of securities are attractive for laundering purposes because they are easily traded and leave little, if any, paper trail.

E. International Transactions and Tax Haven Countries

The ongoing internationalization of securities markets parallels a similar development in money laundering.

Sophisticated laundering techniques are increasingly taking advantage of the integration of the world's securities community by utilizing transborder transactions and tax haven countries to obstruct any subsequent paper trail.

The first step in many international laundering operations is to send illicit money offshore. According to Stamler and Fahlman, brokerage firms can be used to facilitate this process:

> One scheme involves a foreign bank that unknowingly represents a criminal and places an order with a local broker for a large sum in securities. The bank advises the broker that the funds will be paid for directly in Canada through a courier. The criminal then engages a courier who delivers the money in a variety of forms, including cash, and the securities are sent to the foreign bank, where they are later recovered by the criminal (Stamler and Fahlman 1983, p. 64).

The destination for illicit funds leaving Canada is usually a tax haven country. Police cases demonstrate a persistent connection between Canada and tax haven financial institutions such as banks and brokerage firms in the laundering of illicit proceeds generated from securities infractions:

> The directors and officers of a public corporation accused of insider trading utilized trading accounts of a brokerage firm located in a tax haven country to launder the proceeds of their activities. The trading accounts were registered in the name of shell companies, and hundreds of thousands of dollars of stocks and government bonds were purchased and sold through these accounts. Legitimate loans from Swiss banks were often deposited directly into these accounts in order to justify large securities transactions (Canada, RCMP case files).

F. Laundering through Publicly-listed, Crime-controlled Companies

Instead of laundering the proceeds of crime through the purchase of securities, a criminal enterprise may take a reverse route and offer shares in a criminally-controlled publicly-listed company. The offering of shares in a company previously invested with illicit monies allows a criminal organization an opportunity to raise legitimate capital financing and, thus, a seemingly lawful source of funds.

Under this method, a private company is incorporated or an existing one bought by a criminal organization. The ownership of the company is registered in the name of a nominee, usually a lawyer or an off-shore corporation. The company is then listed on an exchange, and securities are issued to the public. The objective of this method is to generate a clean dollar through the issuing of shares for every dirty dollar invested in the company before its listing on a stock exchange.

It is important that the company be viable, financially sound, and have a reasonable profit potential, so that shares are attractive but do not warrant unnecessary publicity. Also, to avoid suspicion, everything about the company must be legitimate after it is listed. The actual laundering occurs after shares are purchased and the "capital financing" is received by the company. This process can be legitimized by an unwitting underwriter.

A variation of this approach is a takeover by a criminal enterprise of a company already listed on an exchange. The shares are usually purchased by nominees. This company can then be used as a laundering vehicle. For example, an influx of illicit money can then be reported as revenue or a loan.

G. Stock Exchanges

Police cases do not identify any one specific stock exchange in Canada as being overwhelmingly used as a laundering vehicle. However, the Vancouver Stock Exchange (VSE) has warranted particular attention in the past. A 1974 report on commercial crime by the Coordinated Law Enforcement Unit (CLEU) in Vancouver notes:

> Associates of organized crime syndicates from the East have attempted to engage in activity in the Vancouver market. In addition, a number of known local criminals, including drug figures and gambling promoters are, or have been, involved in the market. It has been estimated there are about 25 to 50 people with criminal records involved in some way or another. The Securities Commission knows of people with long criminal records who associate with major criminally-oriented promoters (B.C. Ministry of the Attorney General 1974, p. 27).

More recently, the Vancouver detachment of the Commercial Crime Section has established that members of outlaw motorcycle gangs and drug traffickers have been involved in the purchase and sale of equities through the VSE. It is suspected that at least a part of the funds invested are the proceeds of criminal activities.

Finally, two books have focused on the Vancouver Stock Exchange as a laundering vehicle. Fleecing the Lamb: The Inside Story of the Vancouver Stock Exchange (1987) charges that the VSE has long been infiltrated by organized crime and presents "the perfect laundering vehicle" (Cruise and Griffiths 1987, p.88). Diane Francis' Contrepreneurs (1988) states that both the Vancouver and Alberta stock exchanges are "nothing more than gigantic money laundering vehicles" (p.viii). However, there is no empirical evidence presented in either of these vitriolic publications to suggest that the VSE is used significantly more as a laundering vehicle relative to other stock exchanges in Canada.

III. STRUCTURE AND REGULATION OF THE CANADIAN SECURITIES INDUSTRY

A. A Brief Overview of the Canadian Securities Industry

The Canadian securities industry is a multi-billion dollar business; in 1988 alone, the value of stock exchanged in Canada was $45.6 billion (Investment Dealers Association of Canada 1989). The impact of the Canadian securities industry is felt throughout almost all other business and financial sectors of the country and is inextricably tied with the economy as a whole.

The majority of securities are traded through Canada's five stock exchanges: Toronto, Montreal, Vancouver, Alberta and Winnipeg. The Toronto Stock Exchange is Canada's largest marketplace for securities trading, accounting for approximately 75 percent of the total dollar value of securities traded on the five Canadian stock exchanges (The Toronto Stock Exchange, A Guide to Listing on the Toronto Stock Exchange. p. 14).

Securities are also traded for companies not listed on a stock exchange. Buyers obtain access to this "over-the-counter" or unlisted market directly through brokerage firms. The trading of both listed and unlisted securities in Canada is conducted by over 900 companies.

B. Regulation of the Canadian Securities Industry

The responsibility for the regulation of the securities industry in Canada rests exclusively with the provinces. Each province administers its own securities legislation which establishes regulations and sanctions. Legislation is administered by semi-autonomous regulatory bodies, known as securities commissions.

The mandate of these commissions is to ensure that the capital markets under their jurisdiction "operate efficiently and fairly and command a full measure of public confidence" (Johnston 1979, p.1). Ultimately, the securities commission is responsible for protecting the investor.

Securities commissions have extensive policing powers and, within the framework of their mandate, can act as investigator, prosecutor, judge and jury. However, while provincial securities commissions are legally responsible for regulating the securities market, in fact, much of the regulation is delegated to the industry.

This self-regulatory responsibility is carried out by the four major stock exchanges (Vancouver, Alberta, Toronto and Montreal) and the Investment Dealers Association of Canada (IDA). In addition to its self-regulatory responsibilities, the IDA also serves as the national professional association for securities' dealers. These five Self Regulatory Organizations (SROs) operate regulatory divisions which, guided by industry by-laws and regulations, are responsible for policing their respective jurisdictions. The powers of these self-regulatory bodies, while administrative in nature, are substantive and touch upon every aspect of the industry, including the brokerage firms, trading practices, and regulation of the companies that issue securities to the investing public.

Public law enforcement is another important tier in the structure of securities regulation in Canada. Many securities-related infractions transcend provincial legislation and are covered by the Criminal Code. This includes such criminal offenses as market manipulation and filing a false prospectus (R.S.C. 1985, c. C-46, s. 340 and s. 358.). Except for the provinces of Ontario and Quebec, and the cities in which stock exchanges are located, the responsibility for investigating such securities-related criminal offenses falls exclusively under the mandate of the RCMP's Market and Securities Unit.

The securities industry is an exception within the financial/business community in that it is the only sector of the economy that has a RCMP unit dedicated specifically to it. The Market and Securities Unit falls within the Economic Crime Directorate of the RCMP. The focus of this unit is on investigating all securities related Criminal Code offenses. This unit has also indicated that proceeds of crime cases will be referred to the appropriate units of the RCMP.

There are three components to securities regulation in Canada: registration, compliance/enforcement and anti-fraud measures.

1. Registration

Registration is required in three parts of the securities industry:

- the registration of representatives dealing with the public to ensure that active participants have achieved a minimum standard of honesty, good reputation and competence;
- the registration of firms and institutions which issue

securities either through an exchange or operate as a brokerage firm. The objectives are to ensure the competence and integrity of the participants and to impose a uniform set of standards about the operational strength and stability of the firms; and

- the registration of information at the time the securities are issued. This release of information must meet industry-wide standards of "full, true and timely" disclosure requirements (Johnston, 1979).

2. Compliance/Enforcement

The second regulatory component ensures compliance with, or enforcement of, the securities legislation and industry rules, regulations and by-laws. Compliance is a preventive measure to ensure that participants meet financial requirements and to detect potential fraudulent activity. Three examples of compliance tools are financial audits, market surveillance procedures and sales compliance examinations. There are generally three levels of audit in the SRO system - external, internal and self-regulatory. Enforcement is a reactive technique. The greatest enforcement tool available to securities regulators is the investigation.

3. Anti-Fraud Measures

The third regulatory component involves the use of anti-fraud measures to define fraudulent or otherwise wrongful conduct; provide administrative, civil or criminal penalties; and utilize enforcement strategies that can be used to identify and suppress fraud. Anti-fraud measures are present in three levels of the regulatory framework: self-regulatory by-laws, rules and regulations; provincial securities legislation; and the Criminal Code.

C. The Changing Securities Environment

The securities market is a vibrant, ever-changing industry. The emphasis and application of regulations in the Canadian securities market reflects and initiates changes within the industry. In particular, the transformations in the Canadian securities industry are exemplified by four recent developments:

- the merging of many brokerage firms;
- changing and tightening of security regulations;
- "blurring" of functions performed by competing financial institutions; and
- an internationalization of the securities market.

Since the 1987 stock market crash, the brokerage community has undergone significant structural changes. A persistent slump in the securities market has meant lower profits and calls for increased efficiency. Most significantly, this has resulted in growing lay-offs of brokers, the closing of less profitable brokerage offices and the amalgamation of brokerage firms. (Montreal Gazette. March 7, 1990, p. E2.)

Recent years have witnessed many high-profile securities violations in Canada and as a result has placed securities regulators under increased scrutiny (Demont 1988, p. 28). Securities regulators, have responded by introducing tougher new securities laws (Walmsley 1986, p. 38; Whyte 1990, p. 32). This process of "re-regulation"[1] of the securities industry is one of the most far-reaching developments within

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[1] The term "de-regulation" is often used to refer to changes within the financial sector that have blurred the functions of the separate institutions. The term "re-regulation" is used to refer to a different and, in some cases, an enhanced system of regulation (see Grant, "IDA Relationship with Governments" IDA Report, Fall 1988).

Canada's financial community.

In contrast, a set of potentially opposing forces, driven in part by technological advancements in the areas of telecommunications and information processing, are bringing about the creation of banking and finance conglomerates. The result has been an increased consolidation of Canada's financial community and a growing internationalization of the Canadian securities industry. These developments will have profound implications for the structure, operation and future regulation of the Canadian securities market. Changes in the latter half of the 1980s saw the barriers traditionally separating the banking and securities industries tumble (Robinson 1987, p. B7) as well as a the opening of the industry to greater foreign participation and international trading (Melnbardis 1988, p. 12).[2]

Enforcement of trans-border securities violations and the required collection of evidence involving different jurisdictions becomes difficult. Mechanisms such as memoranda of understanding between countries, the creation of the International Organization of Securities Commissions (IOSC), the International Councils of Securities Dealers and Self-Regulatory Organizations, the Fédération Internationale de Bourses de Valeurs and the Organization for Economic Cooperation and Development (OECD) have been used to address some of these problems.

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[2] For example, electronic trading linkages connect Canada to U.S. securities markets with supporting clearance and settlement linkages. As well, more liberalized federal legislation allows foreign firms to own 100 percent of a Canadian securities dealer and in some provinces allows such securities firms to operate as full-service dealers.

D. Analysis: Strengths and Weaknesses of Brokerage Firms, Government and Self-Regulatory Bodies

1. Strengths

The "strengths" of the securities industry's regulatory structure which can facilitate law enforcement in combatting money laundering include:

- record-keeping and paper trails;
- the investigative powers and resources;
- company auditors;
- powers to freeze and seize;
- disclosure of source of funds;
- policies on cash transactions; and
- net worth information on new client application forms.

i. Record-keeping and Paper Trails

The record-keeping procedures of the securities industry creates paper trails which can be of great value to law enforcement proceeds of crime investigations, prosecutions and forfeitures. Registrations, sales, purchases and other transactions occurring within the industry are documented and maintained on file by both regulatory bodies and industry members. As Philip Stenning states, attention to proper documentation is central to regulatory compliance procedures:

> "since documentation provides the essential paper trail through which compliance can be monitored and, if things go wrong, violations can subsequently be detected and investigated" (Stenning 1985, p.9).

Securities industry records are of greatest benefit to law enforcement efforts in a reactive sense because they provide evidence during financial investigations. When analyzing the record-keeping and information processing function of the securities industry in this context, by far the greatest amount of information is available within the brokerage firm. This stems from the brokerage firm's internal record-keeping requirements which maintain a focus on the "grassroots" level of the industry (i.e. individual clients and their transactions).

The provincial securities commissions and industry self-regulatory bodies receive and process relatively little information directly of benefit to the detection and/or tracing of illicit funds laundered by an investor in the stock market. There is little information on hand at the securities commission which specifically identifies and monitors individual clients and transactions.[3]

An individual record can facilitate an investigation by identifying criminal ownership of a security, detailing transactions conducted by a launderer and providing information on the size and value of the securities holdings. Moreover, in combination with many other documents, records and pieces of information retained within the industry, there is greater potential to trace illicit proceeds from its investment vehicle (i.e. securities) to its source (i.e. the criminal enterprise).

Because of the amount of records and information available to investigators, there may be potential to recognize discrepancies between the different records which can in turn indicate an attempt by clients of the securities industry to cover laundering activity. In addition, the repetition of information on each document can potentially be useful for a tracing investigation because each document gathers information from slightly different perspectives. Even relatively simple information such as the name of a client, or the day on which a security was purchased, may be useful to an investigation when numerous forms with similar information are compared. The information on one document can then lead to other records and documents within a brokerage firm as well as outside it. Thus, the records which are significant to a laundering investigation must be seen, not as mutually exclusive, but critically interdependent.

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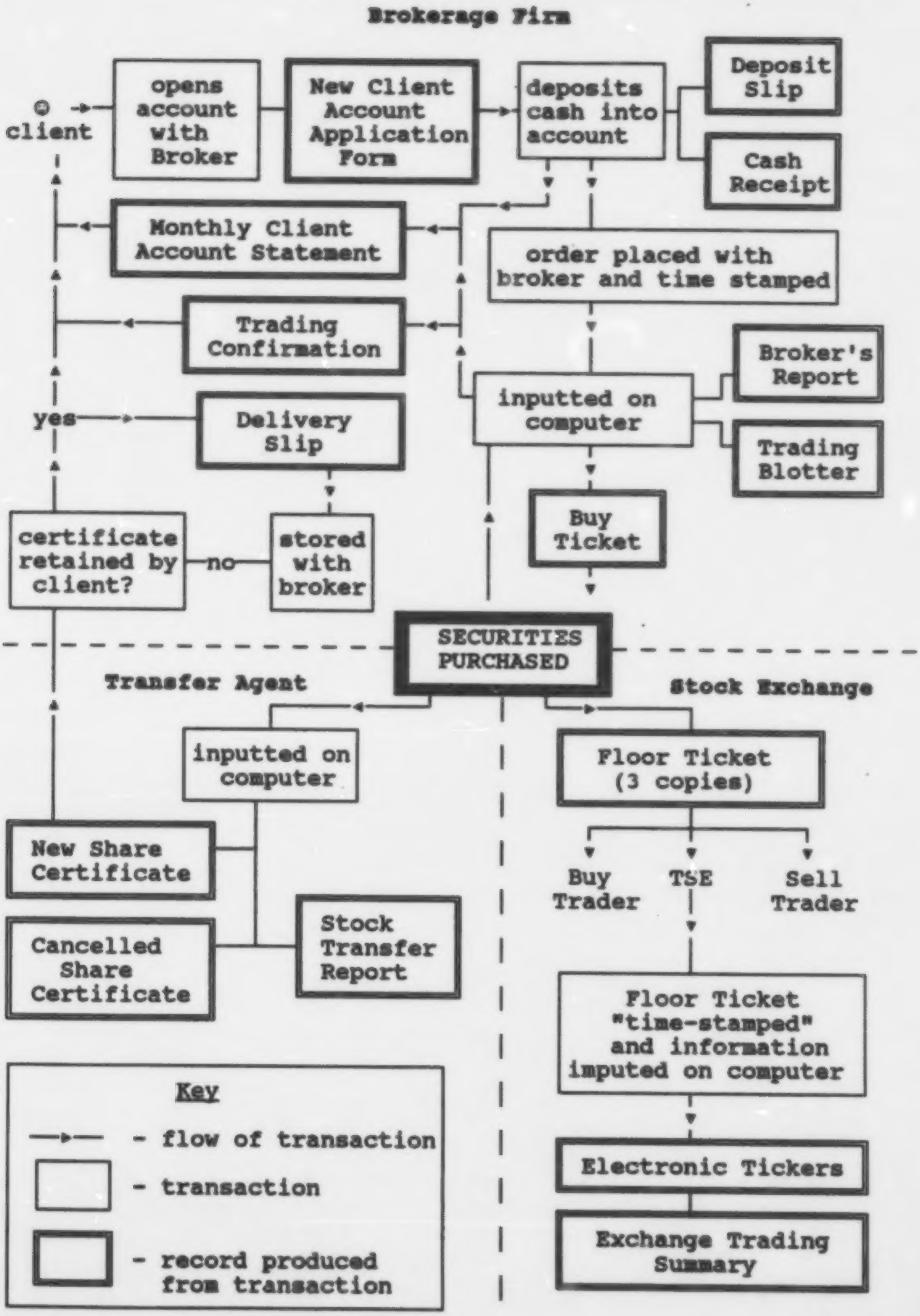
[3] The securities commission and self-regulatory body documents of most benefit would be those pertaining to listed companies which had been initially financed by criminal enterprises and which are still controlled by these illegal organizations and also documentation relating to the registration of investment dealer companies and individual registered representatives.

Finally, in addition to creating a paper trail, records can also serve as evidence in a court of law establishing criminal ownership of securities or net worth analyses, thereby facilitating the forfeiture process. A summary of the types of records maintained at different levels of the security industry is presented in the diagram on the following page.

Despite the quantity of the records maintained, their effectiveness is limited by the lack of information geared towards the detection and tracing of the proceeds of crime. Moreover, there are few means available to brokerage firms and regulators to ensure that clients completely and accurately fill out the required forms. This is especially apparent in the use of nominees in the laundering process.

Records Produced From the Purchase of Securities (Midland-Doherty, National Trust Company and the TSE)


Brokerage Firm
client
opens account with Broker
New Client Account Application Form
deposits cash into account
Deposit Slip
Cash Receipt
Monthly Client Account Statement
order placed with broker and time stamped
Trading Confirmation
Broker's Report
inputted on computer
Trading Blotter
yes
Delivery Slip
Buy Ticket
certificate retained by client?
no
stored with broker
SECURITIES PURCHASED
Transfer Agent
Stock Exchange
inputted on computer
Floor Ticket (3 copies)
New Share Certificate
Buy Trader
TSE
Sell Trader
Cancelled Share Certificate
Stock Transfer Report
Floor Ticket "time-stamped" and information imputed on computer
Electronic Tickers
Exchange Trading Summary
Key
- flow of transaction
- transaction
- record produced from transaction

ii. Investigative Divisions and Powers to Investigate

Each of the major securities commissions, stock exchanges, the IDA and national brokerage firms operate enforcement divisions which are responsible for investigating infractions against securities regulations and serving as a liaison between the securities industry and law enforcement.

Securities commissions are empowered through provincial legislation to conduct investigations when they suspect that an offence or fraudulent act has been committed against securities legislation. They have broad authority to investigate all phases and aspects of an individual's or company's business affairs, including powers to enter the business premises of an individual (with a commission and court application) even when a formal investigation has not been initiated (B.C. Securities Act, R.S.B.C. 1985, c. 83, s. 127[2]). They possess the power to summon and examine witnesses, to require the production of documents and records, to seize and take possession of documents, records and securities and to demand the disclosure of beneficial ownership of securities of a company (Ontario Securities Act, R.S.O. 1980, c. 466 s. 11 to 17).

To some degree, the powers of securities commissions to conduct investigations and require the production of documents are generally much wider than those provided to law enforcement under the Criminal Code. For example, special search warrants under section 462.32 of the Criminal Code must be obtained from a judge under considerably more restricting circumstances.[4]

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[4] This includes completing a form in which the information given must establish reasonable grounds to believe that there is a building, receptacle or place, any property in respect of which the forfeiture may be made, and must be one which could arise from a conviction of an enterprise crime offence.

Securities legislation empowers securities commissions to investigate industry participants if it appears probable that any person or company has committed an offence under the Criminal Code (R.S.O. 1980; c. 466, ss. 11[1]). However, the Ontario Securities Commission has not used this provision in over two years and future amendments to the Ontario Securities Act may remove the power of the Securities Commission to investigate Criminal Code offences. The aversion to using these powers by Ontario and other provincial securities commissions results from the emergence of a body of case law that strongly suggests that administrative and criminal powers must be exercised separately. There is a concern on the part of securities commissions that the use of the investigative function in a criminal matter may prompt a challenge to the commissions power under the Charter of Rights and Freedoms.

Notwithstanding these legal restraints, the investigative divisions of the regulatory and self-regulatory bodies can facilitate the tracing of illicit funds in the securities industry in two fundamental ways:

- by providing law enforcement with background information and technical expertise based on their experience and knowledge of the securities industry;
- by investigating and "screening" money laundering referrals from industry participants and turning over to law enforcement only those cases that would most accurately represent offences against the proceeds of crime provisions of the Criminal Code.

iii. Assisting in the Forfeiture of the Proceeds of Crime

Securities commissions can potentially facilitate law enforcement's forfeiture of securities and other properties and assets which are thought to be proceeds of crime. This ability stems from the securities commissions' powers to freeze and seize securities and other property as well as the power to issue cease trading orders. These powers could potentially be used to prevent a suspected criminal launderer from absconding with or disposing of securities which have been purchased with illicit money.

For example, provincial securities acts state explicitly that, where criminal proceedings have commenced against a person or company, any securities in their possession can be frozen by the commission. (Ontario Securities Act, R.S.O. 1980, c. 466, s. 16[1]d). During the course of an investigation securities commissions can seize securities (Manitoba Securities Act, S.M. 1988, c. S-50, s. 22[6]).

In addition, they can issue a cease-trading order which effectively freezes all securities issued by a listed company originally financed by illicit money (Alberta Securities Act, S.A. 1981, c. S-6.1, s. 165 [1]) or by an individual suspected of investing illicit money into the securities market (Quebec Securities Act, R.S.Q. 1977 c. V-1.1 ss. 249-255). Finally, securities commissions can also recommend to their Ministers the liquidation of public companies controlled by criminal enterprises (Quebec Securities Act, R.S.Q. 1977, c. V-1.1, s. 261[3] and [4]).

The use of these powers to assist in the seizing of criminal proceeds is consistent with provincial securities acts. For example, the Ontario Securities Act permits such actions, if in the opinion of the commission, they are in the public interest (R.S.O. 1980, c. 466, ss.123 [1]).

However, as with the investigative function of securities commissions, the utilization of these powers to facilitate criminal forfeiture is potentially restrained by the separation of administrative and criminal powers. As a result, securities commissions will be apprehensive to freeze property for the purpose of permitting an Attorney General to make an application for forfeiture due to the plausibility of a Charter challenge.

iv. The Role and Power of External Auditors

Provincial legislation requires that companies issuing securities to the public retain an external auditor to examine and report on the accuracy of the company's financial statements. The external auditor's report accompanies the financial statements of an audited company.

External auditors can, therefore, facilitate the tracing of illicit funds invested in a company based on their detailed knowledge of a company's financial position. Moreover, through federal and provincial legislation, auditors have the power to access and examine documents of a company. For example, Section 220 of the British Columbia Company Act gives an external auditor the following powers:

> The auditor of a company shall have access at all times to every record, document and instrument, account and voucher of the company and its subsidiaries, and is entitled to require from the directors, officers and employees of the company and its subsidiaries information and explanations necessary, in his opinion, to enable him to report as required by this Part (R.S.B.C. 1979, c. 59, s. 220).

The external auditor can be used to facilitate law enforcement in combatting money laundering in essentially three ways:

- detect suspicious transactions which may indicate laundering activities;
- facilitate an active investigation (potentially in conjunction with a forensic accountant);
- present impartial evidence in a court of law.

v. Disclosure of Source of Funds - Public Companies

Upon the request of the securities commission and/or the stock exchange, a listed company must submit a "Source and Application of Funds" report. This document requires that the company reveal the source of its initial investment. Thus, the onus is placed on the company to verify the source of its initial investment. These disclosure requirements are in place to ensure that the company issuing shares is financially sound and meets full, true and plain disclosure requirements.

A "Source and Application of Funds" report is limited however in its usefulness to investigations when the company records show the source of original investment and/or financing to be from an off-shore tax haven.

vi. Net Worth

Through new client application forms, brokerage firms obtain financial information from new clients, such as annual income, occupation, name of employer and credit references. When the Crown undertakes a forfeiture of the proceeds of crime, this information could be used as a benchmark to determine the net worth of a criminal enterprise nominee and/or the enterprise itself. This can be done by comparing the value of securities in the possession of the suspected criminal launderer and the net worth stated on the application form.

vii. Brokerage Houses and Cash Transactions

In general, cash deposits into trading accounts of brokerage firms is uncommon. As such, clients conducting cash transactions would be conspicuous. Notwithstanding the rarity of cash transactions in the investment industry, brokerage firms have incorporated policies on cash transactions. For example, Midland Doherty notifies its Compliance Division when a cash deposit is made into a client's account. A record is also kept of the date of receipt and denominations received. Through this capacity, the Compliance Division could detect patterns and suspicious activities of repetitive cash transactions. Moreover, the IDA has developed by-laws and regulations relating to the documentation of all cash receipts over $10,000 and to provide outside evidence of identification and signature requirements of persons making such deposits.

viii. Securities Industry Money Laundering Enforcement
The brokerage community has begun to recognize the problem of money laundering and has take tentative steps towards combatting the problem. The Joint Industry Compliance Group, a committee made up of compliance personnel of brokerage firms and the self-regulatory organizations, has addressed the topic of money laundering. In addition, representatives of the Investment Dealers Association have participated in consultations with the federal government-private sector Advisory Committee on Money Laundering. Previously-mentioned currency reporting and identification requirements recently developed by the IDA have been reported to the Advisory Committee and submitted to the Department of Finance for review.

2. Weaknesses

The following six factors have the potential to weaken the ability of the securities industry to assist in combatting money laundering:

- restricted mandate;
- unverifiable disclosure of source of funds;
- unverifiable beneficial ownership;
- unregulated brokerage firms

- internationalization of the industry; and
- vulnerability of brokers.

i. Restricted Mandate

One of the greatest weakness in the regulatory structure of the securities industry is that there are no specific provisions for detecting and preventing money laundering. While securities legislation may be adequate to facilitate the tracing of illicit funds, the regulatory systems are set up strictly to detect and prevent securities-related infractions, such as insider trading and market manipulation.

The effect of the restrictions on the mandate of the regulatory bodies in the securities industry can best be seen in the information solicited on industry records. There are few proactive mechanisms which can serve as "bells and whistles" for detecting illicit money.

The effectiveness of the records is also limited by the quality of information. Industry records are not geared towards detecting and tracing of illicit funds and thus may prove weak in providing direct links between a laundering vehicle and the criminal enterprise. In addition, there are few means available to brokerage firms and securities regulators to verify that all information given by a client is complete and accurate. This is especially apparent in regards to the declaration of nominees. While the securities industry is very sensitive to the use of nominees and beneficial ownership to prevent insider trading, there are few mechanisms which ensure regulations requiring the declaration of beneficial ownership are complied with.

This weakness is compounded by the fact that most regulatory bodies are already stretched to their limits enforcing existing securities-related infractions.

ii. Disclosing Source of Funds

There is little onus placed on a client investing in securities to disclose to a brokerage firm the source of funds invested in securities. Even in those cases where information is solicited regarding the source of funds invested, there are few resources available to verify the accuracy of the information given.

iii. Nominee Accounts/Beneficial Ownership

The use of nominees as an accepted business practice within the securities industry presents a major obstacle to the tracing of illicit funds. Criminal enterprises place ownership rights in the hands of "clean" nominees, but wield the real power over both the account and the nominee. "Smurfs" used by launderers are usually provided with a plausible explanation to provide to the securities industry and are otherwise sworn to secrecy by the beneficial owner--the criminal enterprise.

While investment dealers are required to record the name of beneficial owners and there exists legal provisions giving securities regulators the power to investigate and reveal beneficial ownership of securities, in actuality, these powers are limited in their ability to trace beyond these types of nominees.

The launderer's use of legitimate intermediaries who are themselves other classes of registrants in the Canadian financial system, such as investment advisors or trust companies, can also unwittingly provide barriers between the trail leading from the laundering vehicle to the criminal enterprise.

iv. Unregulated Brokerage Firms

It is estimated that the self regulatory system of the securities industry covers approximately 95% of the securities business in Canada. (Investment Dealers Association of Canada, 1989). The remaining 5% of securities business is facilitated by over 750 firms which operate outside of the self-regulatory system and which are subject to minimal, if any, regulation at all. This unregulated portion of the brokerage community leaves the securities industry extremely vulnerable to money laundering through gullible or unscrupulous dealers. Moreover, it potentially may allow for the entry of criminally-owned and operated brokerage firms.

v. Lack of International Agreements

The ongoing deregulation and internationalization of the Canadian securities industry has negative implications for the detection and prevention of money laundering. Sophisticated laundering techniques increasingly take advantage of the integration of the world's securities community by using trans-border transactions, thereby complicating subsequent investigative trails.

Recently, the United States Securities and Exchange Commission and the provincial securities commissions signed a memorandum of understanding facilitating securities investigations between the two countries (Gherson 1988, p. 2). This in turn is augmented by a bilateral mutual legal assistance negotiated between the two countries.[5]

However, the greatest problem is tracing transactions involving financial institutions in tax haven countries with secrecy and blocking laws. The internationalization of the Canadian securities market has not been accompanied by comprehensive international treaties with offshore tax havens, which would facilitate trans-border investigations. Generally, time-consuming and often futile litigation is the only means available to Canadian securities regulators to obtain information from an offshore tax haven.

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[5] For more details, see Chapter Seven: Money Laundering - An International Perspective.

Enforcement problems associated with secrecy and blocking laws are not unique to securities regulators. They also hinder the investigative powers of other regulatory and law enforcement agencies. A study of the U.S. Securities Exchange Commission showed that:

> As a result of secrecy and blocking laws, the SEC has encountered serious difficulties in obtaining information during investigations pertaining to insider trading and manipulation of market prices. It has also experienced considerable problems in investigating misstatements and omissions of disclosure statements, violations of registration requirements, looting of corporate assets, and laundering of funds obtained through illegal conduct (as cited in Kauffman 1985, pp. 825-26).

Thus, while criminal enterprises have gained easier access to an international venue to launder illicit profits, Canadian law enforcement agencies and regulatory bodies will continue to encounter frustration when conducting trans-border investigations, particularly those in tax havens.

vi. Vulnerability of Stock Brokers

An important link in the securities regulatory chain is the individual broker or registered representative. The nature of the broker's business is to produce sales, a goal motivated by commissions. Thus, in the competitive securities atmosphere, there are many financial incentives to bend or break industry rules. Despite the host of measures in place by brokerage firms and SROs to deter the unethical and illegal actions of stock brokers, the abuse of industry regulations by brokers and other industry insiders continue to be a persistent problem in the Canadian securities industry (Saunders, Globe and Mail, 1990).

The increasing competitiveness of the brokerage business, combined with the attractiveness of the copious amount of funds available from illicit sources leave the unwitting or unscrupulous broker increasingly vulnerable to money launderers.

IV. CONCLUSION

As police cases indicate, the securities industry must contend with the fact that it is used as a laundering vehicle for not only the proceeds of drug trafficking and other enterprise criminal offenses but also traditional securities-related illegalities.

The rarity of cash in securities transactions, means that the proceeds of enterprise criminal offences entering a brokerage firm in its original cash form will be conspicuous and more easily detected than in other financial sectors. Despite the rarity of cash within the securities market, however, police cases reveal that the cash proceeds of crime have found their way into securities investments.

The securities industry must also contend with the laundering of the proceeds of securities infractions. This "self-financing" aspect of laundering within the securities market distinguishes it, in part, from other industries used as laundering vehicles. The mechanisms used to facilitate securities violations, such as nominees, tax haven countries, shell companies etc. are analogous to those used during the laundering operation. When used in conjunction with one another it is often difficult to delineate between the securities infraction and the effort to launder illicit proceeds.

An important parallel between the laundering of the proceeds of drug trafficking and the laundering of the proceeds of securities violations through the securities market is grounded in, for the most part, the absence of cash. However, the absence of cash does not preclude the securities industry from constituting a significant laundering vehicle. Indeed, such an observation portends that the securities industry is used to facilitate the latter stages of the laundering process, especially in conjunction with other laundering vehicles such as, for example, banks, tax haven countries, and real estate.

Action on the part of the securities industry and regulators is central to any efforts to detect, deter and trace illicit funds. There are two stages essential to maximizing the securities industry's effort to combat money laundering:

- a systematic and ongoing process of educating those in the industry on how to deter and detect illicit money invested in their industry; and
- structural changes within the industry, whether it be corporate policy, industry by-laws or legislation, should be considered.

Awareness and training programs must be a part of this process. Assistance with enforcement and greater involvement of the regulators must follow. Concrete steps should be taken to ensure that these new measures are effectively enforced. Throughout the process, there should be continuing interaction among industry participants, securities regulators and law enforcement officials.

Brokerage firms can make a significant contribution by developing policies regarding:

- cash transactions;
- detailed scrutiny of the source of invested funds;
- limitations on nominee-beneficial owner relationships;
- the maintenance of detailed record-keeping procedures which can create adequate paper trails; and
- reporting of all suspected money laundering cases to securities regulators and/or law enforcement.

The intertwining of securities violations and money laundering creates a great need for securities regulators to recognize the problem of money laundering and incorporate a means to combat this problem in their conventional regulatory mandate and techniques. Government and industry self-regulatory bodies can facilitate the offensive against money laundering both proactively and reactively. Proactively, this involves ensuring that brokerage firms institute anti-money laundering policies. This can be incorporated directly into existing compliance examinations of regulatory bodies and must cover all brokerage firms, in particular those that are presently unregulated. Reactively, government and industry regulators can use their investigate functions to investigate suspected money laundering referrals by brokerage firms. Investigations that reveal criminal activity can then be referred to law enforcement. The responsibility to combat money laundering by securities regulators is consistent with their mandate to ensure that the Canadian securities market operates fairly and efficiently and commands a full measure of public confidence from both investors as well as companies issuing securities.

CHAPTER FOUR

MONEY LAUNDERING THROUGH REAL ESTATE IN CANADA

I. INTRODUCTION

There are many inherent attributes of the Canadian real estate industry which make it an attractive investment. Canada provides both a politically and economically stable environment and boasts a real estate market which offers an attractive return on investment. Real estate investment also provides an array of provincial and federal tax avoidance benefits, ranging from depreciation of the property over the life of the assets to deductions for interest payments.

These are important considerations for the legitimate business person when making an investment decision. The same rational applies, to some extent, to the enterprising criminal. However, there are other important criteria which a criminal applies in making a decision regarding what sector of a country's business and/or financial community to use in the laundering of proceeds of crime. The criminal investor also requires a vehicle that provides the capability to convert cash into another form, while disguising both the ownership of the property as well as the origins of investment capital.

The buying and selling of real estate satisfies the requisite of conversion, and because a vast array of laundering techniques can be used in conjunction with real estate, the veil of secrecy is effectively maintained. Money laundering can be disguised as legitimate business transactions associated with real estate, such as down payments, mortgages, loans, rental revenue, development and renovations expenses, etc. In addition, a host of mechanisms commonly used in Canadian real estate transactions can be utilized to help frustrate efforts to reveal ownership and source of funds. This includes the use of nominees, lawyers, shell and legitimate companies, financial institutions and tax haven countries.

While ownership can be effectively obscured, the criminal can still maintain control of the asset. For example, luxury estates for personal use provide criminals with direct control over a valuable asset, often through a ownership or lease arrangement specifically drafted to conceal their actual ownership of the property (Karchmer, April, 1988, pp. 44-45).

In addition, the illicit funds generated directly from criminal activities become intermingled with profits from legitimate real estate transactions and third party interests. Although the original investment capital is derived from illegal activity, each subsequent transaction distances the newly acquired assets from the crime, thereby giving the investment an air of legitimacy. In addition, throughout the laundering process, the criminal is able to take advantage of, and abuse, certain conventional industry practices and regulatory loopholes which greatly facilitate the laundering activities.

Until new legislation dealing with the proceeds of crime was proclaimed law in 1989, real property in Canada deemed to be proceeds of crime could not be seized or caused to be forfeited by the Crown under the auspices of criminal legislation.[1] As a result, real estate was virtually out-of-reach of law enforcement and therefore provided a safe investment. Bill C-61 addresses this loophole; however, connecting proceeds of crime to the laundering vehicle remains difficult.

In short, real estate satisfies the inherent objectives of money laundering: it provides the criminal with the opportunity to convert illicit monies into another form, while effectively concealing both the source of investment capital and ownership. While real estate may not offer the speed and convenience of financial institutions, as Karchmer notes, "real estate transactions definitely represent additional means for concealing the origin of illegal wealth and permitting owners direct access to and use of that wealth" (Karchmer 1988, pp. 44-45).

II. POLICE CASE ANALYSIS

An examination of police cases reveals that the use of real estate as a laundering vehicle ranges from the simple to the sophisticated. At one end of the scale, illicit proceeds can be used simply to purchase a home as a residence:

> In 1982, the Mexico City Chief of Police was discharged from his office due to allegations of extortion, drug smuggling, tax evasion and arms smuggling. The RCMP

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[1] Prior to Bill C-61, law enforcement relied on search, seizure and forfeiture provisions pursuant to sections 443 and 312 of the Criminal Code, (R.S.C. 1970, c. C-34) respectively. These provisions permit the search and seizure of tangible items that are the object of or will provide evidence of a criminal offense. Because real estate was purchased with the proceeds of crime and not actually involved in the criminal act, it could not be seized under these provisions. (See Regina v. Smith [1985] C.C.L. 10808).

> discovered that his wife owned and lived in two homes in Montreal worth close to $600,000 (CDN). The Mexican authorities also learned that the couple owned two estates in Mexico valued at $6.6 million (US). It is believed that the money used to purchase the Montreal homes came from the embezzlement of fines collected by Mexican police. The illicit funds made their way into Canada either in the form of electronic wire transfers, certificates of deposits or cash physically carried across the border (Canada, RCMP case files).

This unsophisticated attempt at laundering makes no real attempt to conceal the ownership of the property, except for purchasing property in a foreign country.

At the other end of the spectrum are police cases in which real estate represents simply one component in a sophisticated international laundering operation involving financial institutions, tax haven countries, lawyers, shell companies and a host of business transactions. It is in the context of a wide-ranging laundering operation that the effectiveness of real estate as a laundering vehicle can be realized:

> Illicit money generated in Canada by the activities of a drug trafficking organization was moved out of the country to a tax haven country where it was deposited in a bank account in the name of a company also registered in the tax haven. The funds would then be repatriated through companies located in Canada under various guises. These companies in turn would invest in real estate. For example, property was purchased in Kitchener, Ontario. In order to facilitate access to real estate as a laundering vehicle the criminal organization incorporated a real estate development corporation. A housing complex was to be built on this land by a construction company, also owned by this organization. One of the means by which illicit funds were repatriated to Canada was to disguise it as a mortgage made to the development company to purchase land (Canada, RCMP case files).

A. Type of Real Estate Favoured

While police cases reveal that both residential and industrial real estate are used by criminal launderers, it is the former which is cited most often. Criminal enterprises invest in both developed and undeveloped residential property. Undeveloped property is either left undeveloped and later sold, or developed by the criminals.

B. Type of Services Favoured

Sophisticated money launderers use the services of companies and professionals involved in the real estate industry to ensure easy and inconspicuous access to this market. In some cases they establish their own real estate companies, and in other instances they use professionals within the industry to assist them to launder their funds.

1. Establishment of Real Estate-Related Companies

Launderers incorporate real estate-related shell and operating companies such as real estate agencies, development companies, construction firms and mortgage brokerage firms to facilitate access to real estate as a laundering vehicle. While these companies are not necessary to purchase real estate, they provide an effective guise for the criminal enterprise by legitimizing their involvement to this investment. Real estate agencies allow a launderer not only access to real estate, but also a sense of legitimacy:

> A Winnipeg real estate agent, used his real estate business as a front to launder the proceeds generated from the trafficking of cocaine and marijuana. Large quantities of Canadian funds were taken to Canadian banks and exchanged for U.S. cash. Based upon his occupation and high standing in the community, the banks willingly exchanged currency. The converted cash

> was then reinvested into real estate holdings to generate rental income (Canada, RCMP case files).

Development and construction companies are also an effective guise under which launderers can invest funds in real estate:

> A large Canadian drug trafficking organization developed a sophisticated scheme to repatriate illicit funds previously moved to tax haven countries. This scheme involved the funnelling of millions of dollars of illicit funds into real estate through development and construction companies owned and controlled by the criminal organization. Under the guise of these companies, the land would be developed into residential and business complexes (Canada, RCMP case files).

Finally, police cases also indicate that mortgage-brokerage companies are used to facilitate access to real estate with illicit funds:

> A Canadian money launderer for a drug dealer established a mortgage brokerage firm. Profits from the sale of drugs were lent in the form of mortgages to customers of this company as part of the overall laundering operation. Monthly payments received on the mortgages were brought to financial institutions in Canada and sent to the U.S. either through electronic wire transfers or in the form of a bank draft.
> In one instance, the drug trafficker appeared at the main branch of the Royal Bank in Calgary with $83,000 (CDN) which he transferred to the Royal Bank in White Rock, B.C. These proceeds in turn were transferred or carried in bank draft form to a financial institution in Sand Point, Idaho. Real estate would then be purchased and sold in approximately two to three months at a loss (Canada, RCMP case files)

2. Real Estate Professionals

Criminals also use real estate professionals, such as sales agents and lawyers to launder illicit money. These professionals can be either knowing or unwitting participants in the laundering through real estate.

i. Real Estate Sales Agents

In lieu of taking the steps to establish a real estate agency, a launderer can take the next best step and utilize the expertise of the real estate sales agent. The use of a professional provides the launderer with access to the services of an industry "insider" who adds legitimacy to real estate transactions. The sales agent can be used unknowingly or, as the following case demonstrates, knowingly:

> A small-time drug trafficker, used his illicit profits as down payments on residential properties. Renovations were done on these acquisitions and then the properties sold at a profit. To facilitate these transactions, the trafficker relied on a close associate who was a real estate agent. This agent conducted all the real estate transactions, including the handling of funds, the purchase of the properties, overseeing the renovations, and eventually selling the properties. During 1985-86, the trafficker and his real estate associate were involved in over 25 house sales (Canada, RCMP case files).

ii. Lawyers

Lawyers are also effective intermediaries for money laundering through real estate. They can act as nominees, purchasers or sellers. They can also negotiate and draft mortgages and other contracts, and act as trustees for beneficial owners:

> Gary Hendin deposited the proceeds of a drug trafficking organization into bank accounts in various tax haven countries to purchase property in the Niagara peninsula, Hamilton, Mississauga and Toronto. This money was routed through a Canadian company, established by Hendin, called Rosegarden Construction. On one particular occasion, Rosegarden Construction purchased property from Greymac Credit Corporation. The investment capital of $300,000 came in the form of a certified cheque drawn on a M & M Currency Exchange

> account payable to Cencan Investments Ltd., two other shell companies incorporated by Hendin. The source of the funds was the Antillean Management Corporation, a shell company located in the Netherlands Antilles controlled by the criminal enterprise. This cheque was then converted to a bank draft and deposited to Hendin's law practice trust account.
>
> Payment in full was disbursed to the solicitors of Greymac at the direction of Rosegarden Construction. A mortgage was registered against the property in favour of Gary Hendin "In Trust." As in other laundering cases involving Hendin and real estate, the property purchased from Greymac was held for a short period of time and then sold at a substantial profit (Canada, RCMP case files).

The efficacy of using a lawyer to facilitate the laundering of proceeds of crime through real estate stems from four attributes inherent in the legal profession:

- lawyers possess the legal and technical expertise to assist in the purchase, development and/or sale of real estate;
- lawyers can conduct real estate transactions in their own names, thus arousing little suspicion and effectively concealing beneficial ownership;
- even if a lawyer is identified as acting on behalf of a third party, solicitor-client privilege effectively block any attempts to reveal beneficial ownership; and
- in most provinces, lawyers are exempt from legislative registration requirements (see Section 3[c]iii).

c. Type of Real Estate Techniques Favoured

One of the advantages of using real estate as a laundering vehicle is that there are a number of different techniques which can be used in conjunction with a real estate transaction.

1. Reverse-Flip Property Purchase

The RCMP describes the "reverse-flip property purchase" laundering technique as a variation of a traditional mortgage fraud:

> An individual purchases a property with a true value of $2 million for a stated purchase price of $1 million. The difference between the true price and the purchase price is then secretly given to the accomplice vendor. After holding the property for a period of time, and perhaps investing a further $1 million in improvements, the property is sold for its new real value of $3 million. The launderer is quite willing to pay the taxes on his "windfall" profit, since it makes the profit appear to be the result of a legitimate real estate transaction (Bowie 1988b, p.6).

In addition to any money that the launderer may have made on the purchase and sale of the property, he has created a "legitimate" source for at least $1 million of criminal proceeds.

2. Quick Sales

Once a property is purchased by a launderer, it is sometimes immediately sold:

> A drug trafficker laundered much of the proceeds of his business into residential properties. Run-down houses were purchased, renovated and then quickly put up for sale as soon as the renovations were complete (Canada, RCMP case files).

The objective behind this laundering scheme is to legitimize illicit funds by claiming they originate from the sale of real property. A myriad of obstacles erected during the purchasing stage will allow the criminal launderer the ability to hide the source of the funds originally invested.

3. Long-term Investments

Money laundering through long-term real estate investments usually involves land development and construction activity. For example, criminal enterprises will own and control the companies developing the property and thus can use over-charging and double invoicing as further laundering techniques.

A variation on this scheme is the purchase of a building for renovation. The outcome of this process will be either the eventual sale of the property or the leasing or rental of the property:

> A drug trafficker kept large quantities of cash in a safety deposit box of a local financial institution until they could be conveniently used to purchase real estate properties which in turn would be rented (Canada, RCMP case files).

The advantage of this technique lies in its ability to generate a seemingly legitimate source of revenue. Further, through the use of obliging tenants and fraudulent bookkeeping, illicit money can also be intermingled with rental incomes.

As was reported by a RCMP intelligence officer working on the proceeding case, investment in real estate can legitimize both the illicit funds and the criminal launderer:

> Since this subject has been operating for a long period of time and has acquired a healthy number of real estate holdings it is now difficult to verify the source and application of the original funds. This is also complicated by the subject's involvement with partners in many transactions. In other words this subject has virtually legitimized himself over time (Canada, RCMP case files).

4. Purchasing Properties Through Tax Haven Companies

Canadian real estate is purchased through tax-haven corporations owned by criminal enterprises:

> This purchase typically involves the loaning of substantial amounts of money by the business entity to the purchasers through a seemingly legitimate business transaction. In fact, the purchasers are nominees or false front companies for the criminal enterprise.
>
> The purchasers make periodic payments to retire the loan and earn an income tax deduction for the interest charged. The criminals often re-enact this process, known as "churning" laundered money, by making additional loans to themselves or to a domestic false front company (Karchmer 1988, pp. 44-45).

5. Using nominees as registered owners

Criminal enterprises will often conduct transactions and have property registered in the name of nominees in order to conceal beneficial ownership:

> A local Winnipeg drug trafficker used nominees as owners of real estate which they purchased and later sold. In addition, the properties were registered with land registry offices under the name of the nominees (Canada, RCMP case files).

A variation on this scheme is to have property registered under an assumed identity:

> A convicted American cocaine importer entered Canada under an alias following his release from prison. Once in Canada, he purchased a $335,000 house in cash (Canada, RCMP case files).

III. PROFESSIONAL ASSOCIATIONS AND GOVERNMENT REGULATION

Central to the effort to combat money laundering in the real estate industry are professional associations and government bodies which regulate the real estate market and industry professionals in Canada. The significant actors in the real estate industry are presented on the following pages.

Government Regulatory Bodies and Professional Associations in the Canadian Real Estate Industry

	Government (not including municipal)	Industry Trade Body/ Professional Association
Canada	---------	- Cdn. R.E. Assn. - Real Estate Inst. of Canada - Cdn. Inst. of Public Real Estate Cos. - Int. Real Estate Fed. - Sac. of Ind. Realters
Alberta	- Superintendent of Real Estate - Registry Offices	- Alberta Real Estate Association - local r.e. boards
British Columbia	- Real Estate Council - Superintendent of Financial Inst. - Registry Offices	- B.C. R.E. Assn. - B.C. Inst. of R.E. - Real Estate Fdn. - local r.e. boards
Manitoba	- Registrar of Real Estate Brokers - Registry Offices	- Man. R.E. Assn - local r.e. boards
Newfoundland	- Superintendent of Real Estate - Registry Offices	- Nfld. R.E. Assn. - local r.e. boards
New Brunswick	- Registrar of Deeds	- N.B. R.E. Assn. - local r.e. boards
Nova Scotia	- Registrar of Deeds	- N.S. R.E. Assn. - local r.e. boards
Ontario	- Registrar; R.E. & Business Brokers - Registrar; Mortgage Brokers - Real Property Registration Div.	- Ont. R. E. Assn. - Ont. Assn. of Mort. Brokers - Ont. Home Builders Assn. - Toronto Home Builders Assn. - local r.e. boards
P.E.I.	- Real Property Records Division	- P.E.I. R.E. Assn. - local r.e. boards

Québec	- Evaluation Foncière - Service du courtage immobilier - Société immobilier du Québec	- Chambre d'immeuble du Québec - Chambre d'immeuble du Montreal, etc.
Saskatchewan	- Land Registry office	- Sask. R.E. Assn. - local r.e. boards
North West Territories	- Land Titles Office	- NWT Real Estate Assn. - local r.e. boards
Yukon	- Lands Branch - Lands Titles Registrar - Business Lic. Div.	- Yukon Real Estate Ass - local r.e. boards

A. Professional Associations

Real estate professional associations are organized along two lines: geographic (i.e. national, provincial, and regional/local) and by specialization (eg. residential re-sale, commercial, industrial, etc.).

The Canadian Real Estate Association (CREA) is a national organization which represents individuals and companies in all sectors of the real estate industry. This organization also operates on the provincial and local level. Municipal and city-wide real estate boards are an important part of the real estate industry because they are in closest contact with the local real estate sectors.

In addition to CREA, professional associations are organized along more specialized lines, such as the Society of Industrial Realters, the Society of Accredited Mortgage Brokers and the Canadian Home Builders Association.

No formal regulatory powers are delegated by the government to professional associations in the real estate industry. The associations, however, enforce a code of ethics and standard business practices and have the power to discipline their members. Their self-regulatory power is limited, however, as they cannot revoke provincial licences and membership in the association is usually voluntary.

Professional associations also operate in an educational capacity. National, provincial and local associations provide varying amounts of educational programs and materials for their members. In addition, institutes educate and train individuals wishing to operate in the real estate industry. One such facility is the Real Estate Institute of Canada.

Real estate associations can potentially use their education and information dissemination capacity to alert and educate members on ways to deter and detect illicit money entering the real estate market. For example, the Canadian Real Estate Association can reach industry professionals through its national, provincial and local structure. Educating individuals who come in contact with launderers should lead to increased diligence on the part of industry professionals. Existing courses provided by these associations can include or be geared specifically to money laundering.

B. Government Regulation of the Real Estate Industry

Government regulation of the real estate market can be demarcated into three categories:

- provincial government regulation of real estate industry professionals and transactions;
- provincial government land registry offices; and

- municipal governments.

1. Provincial Government Regulation

The regulation of the real estate industry in Canada falls under provincial jurisdiction. Each province has legislation dealing with the real estate market and operates a government body which is responsible for regulating real estate transactions and professionals.

Real estate regulation focuses on protecting the consumer. Thus, legislation and regulatory efforts are directed at participants within the industry, such as real estate agents and mortgage brokers. To ensure professionalism and accountability, industry regulations require that all participants be licensed and registered, thus ensuring professionalism and accountability.

Many of the responsibilities of the regulatory bodies revolve around their role as the industry registry and information repository. They also have limited legislative powers to investigate the business of realters, mortgage brokers and real estate transactions.

While these regulatory bodies conduct audits as a part of a formal compliance system, the majority of investigations are in response to complaints by consumers. The registry bodies have the power to suspend and revoke licences after a hearing is held by the regulatory body.

2. Provincial Registry Offices and Land Registration

Because the seizing and forfeiture of laundering vehicles requires establishing ownership, the provincial government office which registers land titles is a critical area of concern to a laundering investigation. It is through the records of these land registry offices that the ownership of property can be traced.

The mandate of the land registry office is to provide a repository for a potential purchaser of real property to check for liens and/or ownership. Thus, this government body constitutes the logical starting point for any criminal investigation involving the tracing of illicit funds through real estate.

The usefulness of the land registry office to assist law enforcement agencies is contingent, however, on the system by which land is registered. At present, there are two systems used in Canada:

- the traditional registry system, and
- the Torrens System.

The latter is a more effective and efficient method of registering property holdings because it provides for a certificate of ownership from the Land Titles Office where it is registered. This certificate is guaranteed by the province.

To search title under the Torrens System, one need go only to the appropriate Land Titles Office where the property is registered. Unlike the traditional registry system, there is no need to examine a deed or trace the history of the property back in time. The Torrens System is more conducive to assisting in the tracing and detection of proceeds of crime within the real estate market.

Unfortunately, each province operates a decentralized system of land registry offices, and at present there is no uniformity throughout the country as to how real property is registered. In Western Canada, the majority of individual land holdings are registered under the Torrens system. Ontario uses both the Torrens and the traditional system. In Quebec and Atlantic Canada, the traditional system is used almost exclusively.

3. Municipal Governments

Municipal governments play a role in the regulation of the real estate industry. While there are variances between municipalities, their role is generally confined to soliciting and retaining information relating to municipal taxes and zoning.

For tax purposes, municipalities receive assessment rolls from provincial authorities which contains ownership information, property description and mailing addresses of property owners. As the provincial government can take months to update assessment rolls, many municipalities require information from the parties involved in a real estate transaction. This would include such information as a letter from a solicitor, a copy of the deed or written details of the transaction. Most municipalities will conduct a search of a property to determine market value and occupancy should the registered owner fall into arrears in municipal taxes.

The only other direct interest taken by a municipality in property ownership occurs during applications to change zoning requirements. Some municipalities require proof of ownership of land which is to be (re)zoned and if a dispute arises concerning the ownership of a property, the municipality will initiate a title search.

Therefore, while information to title of land may be present in a municipal office, this information is simply received from provincial offices. Municipal offices may, however, have information regarding real estate transactions that may be of relevance to proceeds of crime investigations.

IV. STRENGTHS AND WEAKNESSES OF GOVERNMENT REGULATION

This section analyzes the existing strengths and weaknesses of government regulatory bodies vis á vis combatting money laundering within the real estate industry. Much of the following analysis is based on the regulatory structure in Ontario. This province represents the largest real estate market in Canada[2], and its regulatory body and legislation have served as a model for other provinces.

A. Strengths of Government Regulation

The strengths of regulatory bodies include: the power to investigate; record-keeping requirements; and the power to freeze assets.

1. Powers to Investigate

Provincial legislation empowers government regulatory bodies to investigate industry participants. For example, Ontario's Mortgage Brokers Act gives the Registrar of Brokers substantive investigative powers to "inquire into and examine the affairs of the person in respect of whom the investigation is being made..." (R.S.O. 1980, c. 295, s. 24 [2]).

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[2] According to 1987 figures, Ontario accounts for 50 percent of Canadian unit sales and 61 percent of the dollar value of real estate transactions in Canada (Canadian Real Estate Association 1987, p.1).

These powers include inquiring into the business transactions of an individual under investigation, entering their premises and examining and removing, if necessary, all books, papers and documents with a court-approved search warrant (Ontario, Mortgage Brokers Act R.S.O. 1980, c. 295, s. 24).

2. Record-keeping Requirements

Criminal investigations into money laundering and real estate rely on extensive and accurate records kept within the industry. All provincial real estate legislation sets out the required record-keeping:

- records surrounding real estate transactions;
- financial books and records required to be maintained by real estate brokers and mortgage brokers; and
- statements to be delivered on the acquisition of a real estate agency.

These record-keeping requirements can provide assistance in subsequent investigations, especially in establishing names of buyers and sellers.

3. Power to Freeze Assets

In certain circumstances, regulatory bodies are given the power to freeze any "assets or trusts funds" under the control of a company or individual (Ontario, Real Estate and Business Brokers Act, R.S.O. 1980, c. 431, s. 18[1]).

While the legislation does not explicitly state that land can be frozen, a subsequent subsection explains that the regulatory body may serve notice to the land registrar that the freezing proceedings undertaken by the regulatory body "may affect land belonging to the person referred to in the notice..." (Ontario, Real Estate and Business Brokers Act, R.S.O. 1980, c. 431, s. 18[4]).

Both of these provisions can potentially serve to assist in the forfeiture of assets of businesses, such as real estate agencies and mortgage-brokerage firms, as well as real estate deemed to be financed through the proceeds of crime. These powers could potentially be used to prevent criminals from absconding with or liquidating their investments.

However, with other regulated sectors of the economy there will be a reluctance on the part of government regulators of the real estate market to utilize their powers to facilitate a criminal investigation. This reluctance stems from the emergence of a body of case law that strongly suggests that administrative and criminal powers must be exercised separately. There is a genreal concern on the part of government regulators that the use of their investigative function and/or freezing powers in a criminal matter may prompt a challenge to the agencies' power under the Charter of Rights and Freedoms.

B. Weaknesses of Government Regulation

1. Limited Mandate and Resources

Legislation enacted to regulate real estate transactions in Canada is designed to facilitate that transaction and to protect the consumer from unscrupulous practitioners. The legislation was not enacted to police the purchaser or to determine the source of the funds.

Thus, it is beyond the mandate of government regulatory and industry self-regulatory bodies to monitor the purchasers of real estate, and the response of these bodies to the investment of illicit funds has not focused on prevention.

Although government regulatory bodies are given legislative powers, limited resources prevent them from exercising these powers. Land registry offices, on the other hand, have neither the power nor the resources to investigate or disclose beneficial criminal ownership in land.

2. Limited Efficacy of Land Registry System

The traditional system of land registry is still used in many provinces in Canada. The ineffectiveness of the traditional registry system allows criminal enterprises registering property through nominees, shell or holding companies to remain undetected. This problem is particularly pronounced in Ontario, where a proportion of property is still registered under the traditional system. Moreover, because both registry systems are used, Ontario has no uniform provincial system. This may present a logistical obstacle to an financial investigation attempting to search for titles.

As the largest real estate market in Canada, as well as the province where police cases indicate that real estate is purchased most often by launderers, these obstacles may prove significant when trying to combat money laundering through real estate.

3. Exemptions From Registration Rules

Section 5 of Ontario's Real Estate and Business Brokers Act provides for exemptions from real estate transaction registration rules. The exempted individuals can conduct real estate transactions without operating through a registered broker.

Among others, these exemptions apply to:

- an individual registered under Ontario's Securities Act;
- a bank or a loan, trust or insurance company trading in real estate owned or administered by the company;
- a person who is practising as a solicitor; or
- a person acting "on his own account" (Ontario, Real Estate and Business Brokers Act, R.S.O. 1980, c. 431, s. 5).

These registration exemptions provide opportunities for the sophisticated launderer to abuse regulatory loopholes and to complicate a trail between the criminal enterprise and the ownership of legitimate real property.

As police cases show, lawyers play an important role in the laundering of funds through real estate. It is, therefore, inauspicious that lawyers are not required to register as brokers when transacting in real estate. This allows unscrupulous lawyers to act on behalf of criminal organizations, or to facilitate their own criminal activities, while avoiding regulatory requirements.

4. Misuse of Nominees

The use of nominees to purchase real estate on behalf of a criminal enterprise is a popular and effective method to hide any formal connection between a legitimate asset and the criminal enterprise. There are few regulatory requirements that prohibit purchasing and registering ownership of real property in the name of a nominee and the concealment of beneficial ownership. The record-keeping procedures of the industry are of little help when nominees are used. Moreover, the use of nominees as registrants inhibits the use of the Torrens registry system as a tool for tracing illicit funds.

5. Permitting Brokers to Simultaneously Buy and Finance

Ontario legislation permits brokers (and exempted individuals) to act as both the purchasing and financing agent for a property transaction (Ontario, Mortgage Brokers Act, R.S.O. 1980, c. 295, s. 4 [4]). In effect, the one individual may act as mortgage broker as well as real estate broker.

This arrangement allows criminal enterprises the opportunity to invest in real estate without questions as to the source of funds. As police cases demonstrate, criminal enterprises may own a realty firm, a real estate development company and a mortgage brokerage firm to expedite their laundering activities.

Criminals are thus able to finance their own development projects under the guise of a mortgage broker or can legitimately provide funds through a business loan and then collect interest payments from legitimate borrowers, thereby cleaning their illicit funds.

V. CONCLUSION

Police cases demonstrate that money laundering through real estate transactions can be accomplished in a multiplicity of ways. In addition to converting illicit cash into an alternative source, various types of companies and professionals can facilitate access. Once real estate is purchased, there are many different ways in which the criminal launderer can use this investment to legitimize incoming illicit revenue.

While efforts to combat money laundering must begin by creating an awareness of the problem of money laundering at the individual company and professional level, police cases reveal that criminal elements infiltrate these levels to access real estate as a laundering tool. In addition, otherwise honest real estate professionals have turned a blind eye to transactions that appear suspicious. Police cases reveal that real estate sales agents have willingly accepted cash payments (as high as hundreds of thousands of dollars). With no professional policy guidelines, ethical, or legal inducements to report such a transaction to law enforcement, the potential for indiscriminate business practices are increased.

Because real estate professionals operate largely on commission, the real estate industry is subsumed within an extremely competitive environment. There cannot be an assumed obligation or expectation that "honest" agents will refuse cash purchases or report these to supervisors or law enforcement unless there are clear industry policy guidelines or rules that specify how, and under what circumstances, a suspicious transaction is to be reported.

It is essential that professional associations and government regulatory bodies be active in combatting money laundering at the professional level. At present, there has been very few efforts made by the real estate industry's regulatory bodies or professional associations to address the problem of money laundering. This lack of awareness facilitates access by criminal launderers into the real estate market. Both professional associations and regulatory bodies must ensure that real estate professionals recognize laundering techniques utilized within real estate and that they are potentially criminally liable if they facilitate such illegal activities.

Professional real estate associations are some of the largest industry organizations in the country. While there are only limited means by which they can control such illegal activity among their large membership, these national, provincial and local industry bodies do enforce strict rules, regulations and a code of ethics which apply to all involved in the professional associations. These bodies can perhaps be most effective in educating and informing industry participants on how the real estate market can be used as a laundering vehicle for the illicit profits of crime.

To counter the entrance of criminals into the real estate profession through incorporating real estate agencies, construction companies or mortgage brokerage firms, tighter restrictions and greater disclosure requirements must be placed on those individuals or companies registering in such professions. In addition, there should be a re-evaluation of regulations allowing an individual or company to operate as both a real estate broker and a mortgage broker simultaneously.

Government regulatory bodies are staffed with personnel empowered through legislation to investigate complaints and inspect participants in the industry. However, they operate predominately as registry offices. With appropriate training and industry-wide incentives, these front-line officers within the provincial government regulatory bodies and professional associations could be a direct benefit to law enforcement in the deterrence, tracing and forfeiture of illicit funds through their compliance and investigative functions.

The existing regulatory infrastructure in tandem with the professional associations can facilitate law enforcement immeasurably in combatting money laundering through the real estate industry.

CHAPTER FIVE

MONEY LAUNDERING AND THE INCORPORATION AND OPERATION OF COMPANIES IN CANADA

I. INTRODUCTION

Law enforcement has long recognized that through the incorporation and operation of companies, criminal enterprises have become firmly entrenched within the business communities of major urban centres across Canada.[1]

One of the main purposes of the incorporation and operation of companies by criminal enterprises is to facilitate the laundering of the proceeds of crime. A recent RCMP investigation of a Toronto-based criminal organization revealed that it owned 14 companies in Canada which were financed either in whole or in part by the proceeds of crime. Over $40 million had been invested into these companies and the majority of this money was generated from the sale of illicit drugs (Canada, RCMP case files). While this case may be an extreme example due to its sheer size, it nonetheless demonstrates the potential for the laundering of illicit money through companies operating in Canada.

This chapter examines the laundering of illicit funds through the creation and operation of companies. Within this context, this chapter focuses on all companies, which have been formed, invested into and/or operated by a criminal enterprise or agent thereof.

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[1] See Co-ordinated Law Enforcement Unit, Organized Crime in British Columbia, B.C. Ministry of the Attorney General, (1975); Quebec Police Commission, The Fight Against Organized Crime in Quebec, (1976); B.C. Ministry of the Attorney General, The Business of Crime, (1980).

A. Definition of Companies

The definition of a company used in this research corresponds to the federal and provincial legislation which governs the incorporation and operation of companies in Canada. A company is any type of limited or unlimited corporation, sole proprietorship or partnership which is in business to make a profit.[2]

For the purposes of this chapter, this definition excludes financial institutions such as banks, credit unions, loan and trust companies, insurance companies, and public companies listed on Canada's stock exchanges.

B. Use of Companies in Laundering Schemes

There are four interrelated reasons for using a company to launder the proceeds of crime:

1. Conversion

As an investment vehicle, companies accomplish the objective of converting illicit funds into an alternative source. This is most apparent with investments into legitimate business with hard assets.

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[2] Canada Business Corporations Act, R.S.C. 1985, c. C-44, Ontario Business Corporation Act, S.O. 1982 c. 4, Ontario Partnerships Act, R.S.O. 1980, c. 370, British Columbia Company Act, R.S.B.C. 1979, c. 59.

2. Legitimation

Companies provide an effective guise to legitimize both the illicit money and the criminal launderer. According to Clifford Karchmer:

> "businesses offer a source of reportable income for tax purposes. The advantage of operating a business that generates enough apparent income to explain lavish spending habits and lifestyles is of particular value to criminals who seek to avoid tax fraud as well as narcotics and organized crime prosecution ... Businesses (also) offer criminals legitimate sources of employment in the community ... which in turn helps criminals cultivate an image of respectability" (1988, pp. 43-44).

3. Linkage Between Laundering Schemes

Companies allow the criminal launderer an effective medium with which to access other laundering vehicles and use different laundering techniques. Most importantly, businesses produce revenue, and it is under this guise that criminals can deposit illicit money into deposit-taking institutions.

In addition, once companies and bank accounts are established, a wide range of business transactions can be used to launder the profits of criminal organizations. Companies are very flexible and can be tailored to a launderer's specific needs. For example, criminal organizations laundering money through investments in real estate will incorporate companies such as real estate agencies, mortgage-brokerage firms and/or development companies to facilitate the laundering process. In this way, the corporation becomes a medium between the criminal organization and other laundering activities.

4. Concealed Ownership

Legitimate business practices associated with companies are effective in concealing criminal ownership. Companies can be incorporated by lawyers, and nominees can be used as owners, directors, officers, etc. Companies in Canada can also be incorporated as subsidiaries of multinational corporations based in tax haven countries with strict secrecy and disclosure laws, thereby preventing the scrutiny of ownership.

In short, the incorporation, financing and operation of companies satisfies the three prime objectives of a laundering vehicle. It allows criminals to convert illicit cash into other assets, create a perception of a legitimate source of funds, all the while effectively concealing the true beneficial owner - the criminal enterprise.

II. POLICE CASE ANALYSIS

A. Extent and Diversity of Companies as Laundering Vehicles

RCMP cases reveal that criminal enterprises are using companies as laundering vehicles. The following police case summaries demonstrate the diversity of companies which are being used as laundering vehicles:

> An investigation of a Quebec drug trafficker revealed that he had considerable investments in taverns, brasseries and motels in that province (Canada, RCMP case files).
>
> A cocaine importer repatriated illicit monies into Canada under the guise of gifts from family members living in other countries. Once the funds arrived in

> Canada, they would be further laundered through investments into restaurants and hair salons (Canada, RCMP case files).
>
> An investigation initiated by Canada Customs revealed that a powerful organized crime syndicate in Canada had incorporated at least six companies in Quebec to facilitate both the importation of illicit drugs and the laundering of its trafficking proceeds. These companies included a financial consulting firm, an import-export company, and a pizzeria (Marsden, April 8, 1988: p. A5)
>
> A cocaine importer laundered a portion of the proceeds of his cocaine trade through a business that specialized in fish sales (Canada, RCMP case files).
>
> RCMP investigators in the Prairies have indications of drug traffickers purchasing pool halls, bingo parlours and laundromats to launder illicit cash (Canada, RCMP case files).
>
> A St. Catharines lawyer acting as a launderer for an organized crime syndicate, incorporated a number of shell companies to launder illicit monies, including foreign currency exchange businesses, investment houses and construction companies (Canada, RCMP case files).
>
> A loan shark operated five donut shops to launder the proceeds of the illegal business (Canada, RCMP case files).
>
> A car dealership helped a known drug trafficker to launder illicit funds through the purchase and sale of late-model luxury cars by allowing the launderer to use the dealership's dealer licence plates and retail sales tax number in order to avoid having the vehicles registered in his name (Canada, RCMP case files).

In addition to these cases, one police case in particular deserves special attention due to the sheer number of companies used, the diversity of laundering techniques associated with these companies and the amount of money laundered through this method:

The 1987 arrest of a Canadian in California for possession of 3,375 kg. of marijuana led law enforcement to the discovery of the operation of a major drug trafficking organization in Canada.

Seized records indicated that this organization used real and shell companies in several countries as part of an elaborate international money laundering network involving over 40 companies worldwide. In Canada alone, the organization had incorporated 14 companies.

The initial stage of the laundering scheme involved moving the cash proceeds from North America, usually to a tax haven country, and then back again to North America. This repatriation scheme relied almost exclusively on the real or shell companies incorporated by the criminal organization.

The illicit money flowed to these companies from bank accounts established in tax haven countries, usually under the guise of investment capital or a loan. Illicit money was laundered through several layers of companies, with the ultimate destination of the illicit funds being either a company owned by the organization or another laundering vehicle, such as real estate. In Canada, most of the money was repatriated into a holding company, and then funnelled through to its subsidiaries. This holding company was owned by another corporation in a tax haven country.

Examples of the repatriation and laundering of illicit money through companies and business transactions in Canada utilized by this criminal organization include:

Land

Property was purchased in Kitchener, Ontario in the name of a development corporation controlled by the criminal organization. A housing complex was to be built on this land by a construction company, also owned by this organization.

Mortgages

Capital in the form of mortgages were lent to companies in Canada.

Investments

Funds were invested in the form of advances or stock purchases to finance other companies and commercial ventures.

Loans

> A trust company located in a tax haven country and controlled by the criminal organization lent $2.73 million (CDN) to Canadian companies which were also owned by this organization.

The incorporation and use of companies as laundering vehicles in this case were extremely complex and serve as an example of the sophisticated layering and inter-linkages between companies used as laundering vehicles.

B. Types of Companies Used

Police cases reveal that criminal organizations use both operating and shell companies for their laundering purposes. Each type of company possesses inherent qualities and characteristics which make it attractive as a laundering vehicle.

1. Shell Companies

Also called "store-front operations," shell companies exist only on paper. They are legally incorporated and registered by the criminal organization but have no real business apart from the manipulation of business and financial transactions for laundering purposes.

The purpose of the shell company is to create a conduit through which the proceeds of crime can be funnelled to other laundering vehicles. This provides a means to obscure any trail that would lead from the final investment obtained from the illicit funds back to the criminal enterprise:

> A cocaine importer in Calgary established a shell company as a means to launder illicit proceeds. Through this company, he purchased legitimate businesses such as a night club. In addition, the shell company purchased real estate and expensive vehicles as well as invested in securities through a trading account registered in its name (Canada, RCMP case files).

A laundering scheme involving companies can range from the simple to the complex. There may be one fake company or a multitude of organizations which form a complex domestic and international hierarchy of parent-subsidiary relationships.

Shell companies can be registered and/or incorporated in the name of nominees, usually a lawyer. Nominees can also assume the positions of directors and officers of the company, although police cases reveal that the heads or upper echelons of criminal organizations may also perform these duties. The use of nominees as incorporators and directors of a shell company is to conceal its criminal ownership.

Once a company or companies are established, accounts are established at financial institutions. Proceeds of crime is then deposited into these accounts either in cash generated directly from the criminal enterprise's illicit business, or in the form of a negotiable instrument purchased with illicit cash. The money deposited can be disguised as loans, investment capital or revenue. Once the illicit money has entered the corporate bank account, the funds are free to be used in any means available to a legitimate company.

A shell company will often be incorporated under the guise of a "holding company." Because the sole purpose of this type of business is to own or "hold" investments (such as subsidiary companies, securities, real estate or other assets), it becomes an effective intermediary between the criminal organization and other laundering vehicles. In many of the police cases studied, the investments, properties and assets controlled by a criminal enterprise were legally registered as being owned by shell companies.

2. Operating Businesses

Criminal enterprises will also utilize real businesses to launder illicit money. These businesses differ from shell companies in that they operate legitimately, offering industrial, wholesale or retail goods or services.

Particularly attractive to the criminal enterprise are businesses that normally deal in substantial quantities of small denomination cash sales. Such high cash businesses include bars, restaurants, retail stores, vending machine companies, car washes, currency exchange houses and movie theatres, to name a few. Businesses with an indefinite inventory are particularly useful since audits will not easily be able to show discrepancies between profits made and inventory sold.

The launderer can now use the cash-generating businesses as a guise to deposit into a bank what is in actuality the proceeds of crime:

> A launderer established two retail gift and novelty shops and then opened a corporate bank account at a local deposit-taking institution. Soon after, large amounts of funds moved through these accounts. Surveillance conducted on this store revealed no where near enough business to generate the quantities of cash being deposited into this account (Canada, RCMP Police case files).

The attractiveness of utilizing a cash-generating business as a laundering vehicle is obvious. The criminal enterprise is free to circulate illicit money because drug proceeds can be easily intermingled with legitimate revenues on a regular basis and an accurate audit of business volume is very difficult (Karchmer 1988, p. 43).

Investments can also be made into existing companies which may be failing and in desperate need of capital. Here the existing proprietors may not be as concerned about the source of the funds. Criminal ownership can be effectively hidden through a "silent partnership" in the business.

C. Laundering Techniques Used

One of the advantages of using a company to launder illicit money is that a vast array of laundering techniques, usually disguised as business transactions, can be utilized. The following list identifies and summarizes particular laundering techniques which can be used with either shell or operating companies:

- loans/loan back schemes;
- direct investments;
- sale of businesses;
- purchase of companies already owned by criminal enterprise;
- double invoicing; and
- false salaries/payroll manipulation.

While this list is not exhaustive, it demonstrates the multiplicity of ways in which criminal enterprises use companies as laundering vehicles.

1. Loans/Loan back

Illicit funds can be invested in a shell or legitimate company under the guise of a loan:

> Two brothers who trafficked in cocaine in Hamilton laundered their illicit proceeds through three licensed taverns, which was registered in the name of a nominee. One of the laundering routes used in conjunction with the taverns was to place fictitious loans on the books. The loans were also in the names of nominees. (Canada, RCMP case files).

In this case, the loans were fictitious and were merely used to circulate more illicit proceeds through a legitimate business with a fairly limited "ceiling" in terms of the amount of cash that one might expect taverns to generate.

A variation of this route is the "loan-back" technique. Through this laundering route, criminal enterprises legitimize illicit money by loaning funds to different branches of their corporate network. As the following example shows, this laundering technique also gives the criminal enterprise an opportunity to earn tax-deductible interest on the illicit funds:

> A Toronto drug trafficker has $500,000 in illicit profits hidden in a bank account registered under the name of a shell company established by the criminal organization. This money is re-invested in a chain of restaurants costing $1 million.
>
> A down payment of $50,000 in legitimate money is made and properly declared, and then a $450,000 mortgage is negotiated from a bank. The remaining $500,000 is "borrowed" from the bank account of the criminal enterprise's company. The $500,000 is repaid with interest to avoid suspicion (Canada, RCMP case files).

In the above scheme, the criminals succeeded in making use of $500,000 in criminal assets in such a way that they were able to invest in legitimate businesses and take advantage of tax incentives for investments. The illicit money will be paid back to the shell company with interest and will allow for further investments with the same funds.

2. Direct Investments

Illicit money can also be invested directly into legitimate companies either in the form of cash or in a negotiable instrument from the criminal enterprise or its shell company. The ability to conceal the illicit source of the funds through this laundering method is maximized when the investment originates with a shell company located in a tax haven country.

3. Sale of Business

One of the most effective means to ensure the secrecy of illicit funds laundered under the guise of legitimate business revenue is to sell the business at some point. Once the business has been sold, the criminal has a legitimate source for the capital:

> Calgary cocaine traffickers owned and operated several businesses, including grocery stores, ice cream parlours and jewellery stores. Proceeds from drug sales were recorded as revenue on financial statements. On the basis of these false financial statements and the apparent profitability of these businesses, the launderer then sold the businesses at exceptionally high prices (Canada, RCMP case files).

The added benefit of selling a business through which illicit money circulates is that it will ostensibly exhibit significant cash flow and as such it will be an attractive investment and realize a high selling price (Bowie, 1988b, p.4). The result is, therefore, safely laundered proceeds and a seemingly lucrative legitimate business that can be sold at a profit.

4. Purchase of Company Already Owned by the Criminal Enterprise

An effective laundering technique is to "purchase" a company already owned by the criminal enterprise. This laundering method is most frequently used to repatriate illicit money previously secreted to foreign tax havens:

> Illicit cash from offshore is used to buy a company that is already owned by the criminal enterprise. In this way, the launderer successfully returns a large sum of money to Canada. Often, the business will be purchased at an artificially inflated price (Clement, Anti-Drug Profiteering, n.d. p. 8).

5. Double Invoicing

The criminal enterprise can employ a laundering technique known as "double invoicing."[3] These schemes are more impenetrable if:

- the criminal enterprise controls both the domestic and the offshore corporations; and

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[3] This term is used generally to mean invoice manipulation rather than strictly "double" invoicing. Double invoicing is, however, also an easy method of moving large amounts of money offshore or indicating a falsely large amount of sales within a business.

- the business exchanges takes place between different jurisdictions--particularly with one party based offshore within a tax-haven country.

These schemes may involves simply invoicing for non-existent property or merchandise, inflated pricing, or double invoicing for actual goods:

> An offshore corporation orders goods from its foreign subsidiary in Canada, and the payment is sent in full to the bank account of the Canadian subsidiary. Both companies are owned by the criminal enterprise and the "payment" for goods is actually a repatriation of illicit money previously spirited out of the country. No actual goods are exchanged (Canada, RCMP case files).

Moreover, if the Canadian company has an invoice indicating that they been charged a high price for the goods, the books of the Canadian company show a low level of profit, which means that company will also pay less in taxes.

The double invoicing method can also be used to send illicit money out of Canada:

> A domestic company orders goods from the off-shore corporation at inflated prices. The difference between the inflated price and the real value is deposited into an off-shore account (Bowie 1988b, p. 6).

Double invoicing results in both the offshore company and its Canadian subsidiary having conflicting records, but since they are in different government jurisdictions a comparison is never made (Clement, n.d., "Money Laundering" p. 10).

6. Illicit Funds Disguised as Salaries

Illicit funds are usually laundered through a business under the guise of legitimate revenue. However, the following case reveals that illicit funds funnelled through a company can also be disguised as salary:

> Since 1982 a launderer owned and operated two video stores through a personal holding company. Personally or through a courier, illicit funds would be picked up from criminal enterprises to be laundered. These funds would be run through the video store as sales over a period of time. The clients of the launderer would receive biweekly cheques from the video stores. To maintain legitimacy the launderer even sent the appropriate documentation on its "employees" to government revenue department. The maximum amount of money a client was allowed to run through the stores the first year is $60,000. This allowed for a credible net worth to be built to avoid suspicion. For his service, the launderer received a 25% commission (Canada, RCMP case files).

III. GOVERNMENT REGULATION OF THE INCORPORATION AND REGISTRATION OF COMPANIES IN CANADA

The government regulatory bodies examined in this section are responsible for the incorporation and/or registration of companies in Canada, as well as the regulation of the bankruptcy of companies. Regulatory bodies exclusive to companies operating in specific sectors of Canada's business and financial communities, such as banking, real estate, insurance and securities, are dealt with in other chapters of this report.

The responsibility for regulating the incorporation of companies in Canada is shared by the federal and provincial governments. A summary of these bodies is presented on the following page:

Federal and provincial government bodies regulating the incorporation/registration of companies

	Name	Department
Federal	Corporations Branch	Consumer and Corporate Affairs
B.C.	Corporate Registry	Finance and Corporate Relations
Alberta	Corporate Registry	Consumer and Corporate Affairs
Saskatchewan	Corporations Branch	Consumer and Commercial Relations
Manitoba	Corporations & Business Names Branch	Consumer and Corporate Affairs
Ontario	Companies Branch	Consumer and Commercial Affairs
Quebec	Direction des Enterprises	Inspecteur Général des Institutions Financères
Nova Scotia	Companies Office	Attorney General
New Brunswick	Corporate and Trust Affairs	Justice
Newfoundland	Register of Deeds, companies and securities	Justice
P.E.I.	Corporations Division	Justice

The federal government is responsible for federally-incorporated companies. The provinces are responsible for provincially-incorporated, foreign-incorporated and unlimited companies. If a company chooses to incorporate federally, it falls under the jurisdiction of the Companies Branch of the Federal Department of Consumer and Corporate Affairs. In addition, it must also register as an "extra-provincial" company in each of the provinces in which it wishes to operate.

Alternatively, a company has the option of incorporating through a single province. In this case it falls under the jurisdiction of the province in which it is incorporated. If the provincially-incorporated company wishes to operate in any other province, it must register with each one as an extra-provincial company. A foreign-incorporated company that enters Canada also falls under provincial jurisdiction and must be registered as an extra-provincial company.

The federal and provincial regulatory acts do not address the specific business concerns of each company. Instead, they focus on the more universal features that all companies possess, such as incorporation, the appointment of directors, the issuing of securities, shareholders voting rights, the appointment of auditors, record-keeping, etc.

The responsibilities of federal and provincial regulatory bodies are similar and clearly defined:

- incorporate and register companies;
- process information that is required by law and maintain files on all companies registered in its jurisdiction;
- conduct corporate and name searches and disseminate public information on registered companies to

interested parties;

- investigate companies at the request of consumers and shareholders and upon direction of courts;
- authorize and issue certificates changing the status of companies (for example, amalgamation, liquidation, continuance and reorganization of share capital);
- ensure compliance with relevant legislation; and
- oversee the winding-up and liquidation of companies.

Most of the legislation administered in this area is based on federal statutes such as the Canada Business Corporations Act (R.S.C. 1985; c. C-44). The acts lay out the legal parameters within which all companies registered in the jurisdiction of the respective regulatory body must operate.

The charts on the following two pages provides a breakdown of information required for the incorporation and registration of companies across Canada.

IV. ANALYSIS: STRENGTHS AND WEAKNESSES OF THE GOVERNMENT REGULATION

Regulatory bodies serve as the point of entry through which criminal enterprises must pass to legitimize illicit profits when incorporating and/or registering companies. Thus, they are in the position to potentially deter criminal launderers and even detect illicit money. This potential resides in the legislative and organizational foundations of these bodies.

Information Required Upon Incorporation of a Company

	BC	ALT	SAS	MAN	ONT	QUE	NFL	NB	NS	PEI	CAN
Name of company	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Restrictions on co-company (if any)	yes	yes	yes	yes	yes	no	yes	yes	no	no	yes
Authorized capital; shares, value, etc.	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
List of shareholder's names	yes	no	no	no	no	yes	yes	yes	no	yes	yes
Location of registered office of co.	yes	yes	no	no	yes	yes	no	yes	no	yes	yes
Names of directors of company	no	no	no	no	yes	no	yes	yes	no	yes	no
Intended business/ object of company	no	yes	no	no	no	yes	no	yes	yes	yes	no
If right to transfer shares restrict.	no	yes	yes	yes	yes	yes	no	yes	no	yes	yes
Number of directors of company	no	yes	yes	yes	yes	no	no	yes	no	no	yes
Names, addresses of incorporators	no	no	no	no	no	yes	yes	no	no	no	no
Districts where it will do business	no	no	yes	no	yes	no	no	no	no	no	no
Names of beneficial owners of company	no	no	no	no	no	no	no	no	no	yes	no
Statement of minimum capital	no	no	no	no	no	no	no	no	no	yes	no
No. of shares held by each shareholder	no	no	no	no	no	no	yes	no	no	no	no
Disclose source of funds invested	no	no	no	no	no	no	no	no	no	no	no

Information Required Upon Registration of Extra-Provincial Corporations

	BC	ALT	SAS	MAN	ONT	QUE	NFL	PEI	NS	NB
Name of company	no	yes	yes	yes	yes	yes	yes	yes	yes	yes
Prov., state, country where co. inco.	yes	yes	yes	no	yes	no	yes	no	yes	yes
Date of incorporation	no	yes	yes	no	yes	no	yes	no	yes	yes
Particulars of company's charter	no	yes	yes	no	no	yes	yes	no	no	no
Duration of company (if any)	yes	yes	yes	no	no	no	yes	no	no	no
Liability of members (if any)	no	yes	yes	no	no	no	yes	no	no	no
Intended business/ object of company	yes	yes	yes	no	no	no	yes	yes	yes	yes
Date which co. intends to start	no	no	yes	no	no	no	yes	no	no	no
Authorized capital; shares, value, etc.	no	no	yes	yes	no	no	yes	no	yes	no
Address of H.O. outside of prov.	no	yes	yes	yes	no	no	yes	yes	no	no
Address of H.O. within prov.	yes	no	yes	yes	no	no	yes	yes	no	no
Names of directors owners of company	no	yes	yes	no	no	yes	yes	no	yes	yes
Power of attorney within province	yes	yes	no	yes	no	yes	yes	no	no	yes
Restrictions placed on business(if any)	no	no	no	yes	no	yes	no	no	no	no
If Transfer of Shares is Restrict.	no	no	no	yes	no	yes	no	no	no	no

A. Legislative Strengths of Government Regulatory Bodies

Government regulatory bodies draw most of their strength from their legislative powers. Their legislation, while not specifically directed at money laundering, contains certain provisions which can facilitate the efforts of law enforcement in tracing and detecting laundering activities. It is important to note that not every province has all these strengths in their respective acts.

1. Power to Investigate

Legislation gives the regulatory bodies, upon direction from the courts, the power to unilaterally initiate and proceed with investigations of a company suspected of being "formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent of unlawful purpose" (Manitoba, The Corporations Act, R.S.M. 1987, c. 225 ss. 222[2]).

In addition, a company can be investigated if "persons concerned with the formation, business or affairs of the corporation or any of its affiliates have in connection therewith acted fraudulently or dishonestly" (Alberta, Business Corporations Act, S.A. 1981, c. b-15, ss. 223 (2)[d]). The powers to investigate under these circumstances are quite substantive. They include the power to enter the premises of a company, order any person to produce documents or records, examine any person under oath, and order any person to attend a hearing (Alberta, Business Corporations Act, S.A. 1981, c. b-15, s.224 [1]).

2. Record-keeping

The record-keeping requirements imposed on companies by legislation can be beneficial in any investigation or forfeiture of a company financed by the proceeds of crime. A head office of a corporation in Ontario, for example, is required to maintain:

- a copy of the articles of the company, by-laws and resolutions;
- a register of present and past security-holders;
- a register of directors, including their addresses; and
- proper accounting records which set out all sums of money received and disbursed, all sales and purchases, assets and liabilities and all other transactions affecting the financial position of the company (Ontario, Business Corporations Act, S.O. 1982, c. 4, s. 5 & 140).

3. Power to Force Disclosure of Source of Funds

In British Columbia, Alberta, and Ontario, a company is required to record "a statement of source and application of funds" on its financial statement to its shareholders or the regulatory body (British Columbia, Company Act,. R.S.B.C. 1979, c. 59, s. 197(1)[a]).

While a criminal organization cannot be expected to voluntarily declare the true source of the funds invested in a company, the completion of this section with fictitious information provides a subsequent investigation with grounds for penalties for false information (Ontario, Business Corporations Act, S.O. 1982, c. 4, s. 255).

4. Power to Investigate and Force Disclosure of Ownership

Legislation gives regulatory bodies the power to investigate and demand the beneficial ownership and control of a company. This disclosure includes beneficial shareholders (Canada Business Corporations Act, R.S.C. 1985, c. C-44, s. 235). Such powers can potentially reveal criminal ownership.

5. Power to Wind-up and Cancel Company Certificate

Regulatory bodies can apply to the courts to have a company wound up if "it is just and equitable for some reason, other than bankruptcy or insolvency, of the corporation that it should be wound up" (Ontario, Business Corporations Act, S.O. 1982, c. 4, s. 206 [1][b][iv]). This power can potentially be used to wind down a criminally-controlled company.

6. Power to Reveal Identity of Shareholders

Any attempt to trace the true ownership of a public corporation must begin with the registered shareholders. Every corporation in Canada must furnish a securities register detailing present and past shareholders of a company (Ontario, Business Corporations Act, S.O. 1982 c. 4, s. 141.) Through this document criminal ownership of a company can be traced.

B. Organizational Strengths of Government Regulatory Bodies

In addition to their legislative powers, government bodies regulating the incorporation and registration of companies have organizational strengths which can lay the foundation for future initiatives assisting law enforcement in tracing the illicit proceeds of crime.

1. Infrastructure

The infrastructure of regulatory bodies can make them an effective ally for law enforcement in the tracing of illicit funds and preventing money laundering through companies. Human resources, records and documentation storage, expertise and information concerning all companies operating in a respective jurisdiction are already in place.

2. Information Storage and Retrieval

The computerization of the record-keeping function within regulatory bodies has resulted in sophisticated information storage and retrieval procedures which expedite the tracing of illicit funds. Information is readily available using various computerized databases, such as NUANS (Newly Upgraded Automated Name Search), Dun's Market Identifiers, etc. which contain information on the majority of companies operating in Canada.

C. Weaknesses of Government Regulatory Bodies

1. Narrow Mandate

In order to attract investment, the federal and provincial governments have pursued economic strategies that encourage both domestic and foreign investment as well as promote and develop entrepreneurial activity. Within this context, the role of regulatory bodies is to facilitate the orderly development of business and to maintain the confidence of business interests in Canada.

It also translates into a strong belief in self-regulation premised on the theory of the "good corporate citizen." Thus, regulatory bodies give priority to facilitating the incorporation and/or registration of companies as opposed to policing them. There is also concern that stricter regulations constitute an invasion of the privacy of company owners, directors and shareholders.

Within their confined mandate, government regulatory bodies believe that it is not their responsibility to act as a quasi-law enforcement agency. More importantly, an emerging body of case law suggests strongly that administrative and criminal powers must by exercised separately, thereby further inhibiting these regulatory bodies to assist in criminal matters. This is reflected in the lack of scrutiny and testing of documentation provided by companies. According to the Enterprise Crime Study Reports:

> "this often means that documents containing incomplete or inaccurate information are processed without question and that any evidence that might indicate criminal evidence can be overlooked" (Canada, Department of Justice 1983, p.33).

2. Limited Scrutiny at Incorporation/Registration

There are minimal information requirements for a person or group of persons wishing to incorporate and register a company in Canada. This lack of scrutiny results from the fundamental belief that owning and operating a company is a right, not a privilege.

The information solicited by regulatory body is usually restricted to name of company, location of registered office, by-laws of company, class and number of shares being issued, number of directors and any restrictions placed on the business of the company (Canada Business Corporations Act, R.S.C. 1985, c. C-44, s. 6[1]).

These information requirements can be easily circumvented by unscrupulous individuals. In addition, most acts do not require that the prospective owners or directors of a company provide identification or reveal the sources of the funds.

3. Lack of Reporting Requirements

Once a company is incorporated and/or registered, the reporting requirements are minimal. In general, the annual filings of a company consists of a one-page "annual return." The return consists of basic information such as the name of the company, corporation number, anniversary date of incorporation and a notification of change of directors of registered office (Canada Business Corporations Act, R.S.C. 1985 C-44, s. 4).

Record-keeping regulations can be easily circumvented by falsifying records or keeping two sets of books. In addition, in some provinces, access to the records of companies by regulatory authorities is restricted. A company has up to 10 days to produce its books, which allows time for the alteration of financial records. Finally, there are very few regulations specifying how long records must be kept, and few filings are ever investigated for their accuracy.

Except for the federal government, no regulatory body requires other financial documents to be submitted. At the federal level, financial documents must be filed if the company's gross revenue exceeds $10 million per year, distributes securities to the public, or has assets over $5 million (Canada Business Corporations Act R.S.C. 1985, c. C-44, s. 160[1]).

4. Lack of Control over Beneficial Ownership

Case studies have shown that in many instances paper trails leading from laundering vehicles to criminal organizations are covered through the use of nominees registered as the owner or directors of a company. There are few restrictions placed on the use of nominees and hence it is impossible to gain knowledge of beneficial or true ownership.

It is also common business practice for a company to be registered in the name of a legal representative. The disclosure of beneficial ownership is, therefore, further encumbered by laws respecting solicitor-client privilege (see Chapter Eight: Money Laundering and the White-collar Professional).

5. Ineffective Regulation of Holding Companies

Although the use of holding companies is a widespread practice, only New Brunswick (Business Corporations Act, R.S.N.B. 1981, c. B-9.1, s. 15) and Nova Scotia (Private Investment Holding Company Act, R.S.N.S. 1989, c. 357) have set out comprehensive definitions and regulations aimed specifically at this type of company.

Most federal and provincial regulatory acts refer to holding companies only in regard to the preparation and submission of financial statements of a company and its subsidiaries. They require that holding companies maintain a consolidated financial statement detailing all its subsidiaries, as well as separate income statements for each subsidiary. (For example, see Ontario's Business Corporations Act, S.O. 1982 c. 4, ss. 156[1]).

While these measures can help the identification and seizure of both a parent company and its subsidiaries, the financial documents can easily be doctored to cover the true portfolio of a holding company.

6. Lack of Regulation of Shell Companies

The incorporation of shell companies is a popular and effective means to launder illicit money. There are, however, few legal restrictions on the operation of a shell company in Canada, and in many parts of the business community, it is an accepted practice.

There are few practical mechanisms at the regulatory level which restrict the use of shell companies as false fronts for criminal enterprises. Nor is it easy to detect a false front company. On paper, such a company may appear to be legitimate.

7. Lack of Substantial Penalties

Penalties for infractions of federal and provincial legislation regarding the operation of companies are too small to deter or punish. For example, the general penalties for contravening Ontario's Business Corporations Act is a $2,000 fine for an individual and a $25,000 fine for a company (S.O. 1982, ss. 255 [2] & [3]).

8. Insufficient Resources

Despite their legislative powers, the regulatory bodies have neither the financial nor the human resources to conduct an investigation into a company suspected of laundering money, let alone take preventive action to detect illicit money.

An informal survey of officials, at the federal and provincial regulatory bodies, indicated that eight out of the ten contacted replied that they would immediately turn over suspected cases of money laundering to law enforcement agencies. The remaining two jurisdictions said they would attempt to first investigate the situation themselves before contacting the police.

D. Government Bodies Regulating the Bankruptcy of Companies

There are similarities between the criminal activities of individuals involved in fraudulent bankruptcies and money laundering. Two important considerations make bankruptcies particularly relevant to the study of money laundering in Canada.

First, as stated in the Enterprise Crime Study Report:

> "the problems of identifying and recovering the proceeds of criminal activity closely parallels the problems of dealing with fraudulent bankruptcy activity" (Canada, Department of Justice, 1983, p.38).

The objectives of an unethical owner or officer of an insolvent company undergoing bankruptcy proceedings is similar to the objectives of a criminal enterprise laundering illicit profits. They are both attempting to convert and conceal property and assets from law enforcement and regulatory authorities.

Second, the investigative powers in the Bankruptcy Act are broad and could be used to aid law enforcement in tracing the conversion or concealment of the illicit assets in a bankrupt company.[4] The Federal Superintendent of Bankruptcies can investigate suspected fraudulent activity and identify, freeze, and recover assets which may have been hidden from creditors and trustees. Therefore, as Stamler and Fahlman state:

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[4] The use of bankruptcy proceedings to tap the assets of criminals was first recommended by the British Law Society in memoranda to the 1960s Royal Commission on Legal Services. Provisions for "criminal bankruptcy orders against convicted persons" were included into the Powers of Criminal Courts Act 1973 (c.62) Part 1, ss.39.

> "the use of the bankruptcy process to...ensure the seizure, management and liquidation of complex business enterprises created with the proceeds of crime, may also be resorted to in certain cases both domestically and internationally" (Stamler and Fahlman 1983, pp.69-70).

For example, these powers could be used to trace and seize assets and property financed through criminal proceeds; to inspect the premises of a bankrupt company; to seize books, records and other documents; to examine under oath anyone who has knowledge of the bankruptcy; and to conduct a investigation into any criminal activity surrounding the bankruptcy. The Bankruptcy Court (The Supreme Court of Canada) is empowered to seize, or order detained any property shown to belong to the estate.

The responsibility for the regulation of corporate bankruptcies rests solely with the federal government and the RCMP. The Office of the Superintendent of Bankruptcies and its administrative designation, the Bankruptcy Branch of the Federal Department of Consumer and Corporate Affairs, administer The Bankruptcy Act (R.S.C. 1985, c. B-3). They are mandated to licence and supervise trustees, ensure that creditors are treated equitably, maintain surveillance over the administration of bankrupt estates, and control abuses of the bankruptcy system.

While the Superintendent of Bankruptcies is charged with investigating abuses of the bankruptcy process, this responsibility is carried out by the Bankruptcy section of the RCMP's Economic Crime Directorate.

It is important to note, however, that these powers are specifically designed to identify and recover assets of a bankrupt estate. Thus, the legislative powers can only be used if bankruptcy proceedings are launched against a company. As well, in many "ordinary" bankruptcies there is a motivation for the bankrupt individual or company to cooperate. Bankruptcy procedures tend to rely on this cooperation. A study by Great Britain's Home Office in 1980 concluded that criminal bankruptcies were very expensive and provided very little return. They are not particularly appropriate for recovering assets salted away by a criminal/launderer who has no incentive to cooperate.

E. Government Regulation of Liquor

Police cases reveal that businesses such as restaurants and taverns are preferred by criminal enterprises due, in large part, to their cash-generating nature. Because the majority of these businesses serve liquor, the provincial regulatory body which governs liquor distribution is relevant to this study.

These regulatory bodies are responsible for issuing licences to businesses wishing to serve beer, wine and spirits. Thus, they are potentially significant to combat money laundering through licensed establishments.

These regulatory bodies have the power to conduct inspections of premises, including random spot checks as well as investigations. In provinces like Ontario, British Columbia and Quebec, the regulatory body operates divisions devoted to inspections and investigations.

Many of these regulatory bodies can also perform special audits which can potentially be used to detect illicit money which may be flowing through the business. Finally, these regulatory bodies have the power to suspend and revoke licences.

In Ontario, some steps have already been taken to combat the problem of crime-controlled establishments used as laundering vehicles. For example, a proposed amendment to the Liquor Licence Control Act will empower the agency to force an applicant to reveal the source of financing for the establishment.[5]

Despite the existing powers, and despite recognition of the involvement of organized crime in licensed establishments in Canada, few of the provincial liquor licence boards have yet taken comprehensive steps to incorporate strict measures into their regulatory functions. For these regulatory agencies to effectively combat money laundering through licensed establishments, all regulatory mechanisms, including applicant review, audit, inspection and investigation, must be utilized.

V. CONCLUSION

The use of companies as laundering vehicles ranges from the simple to the complex. Companies serve as straightforward vehicles for the investment of illicit money or as part of an intricate international network of shell and operating companies.

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[5] Telephone interview with an official from the Liquor Licence Review Board of Ontario, March 23, 1990.

Companies are normally used in conjunction with other laundering techniques and vehicles--most notably, tax haven countries, deposit-taking institutions and business transactions. It is when they are used in conjunction with other laundering vehicles that companies are most effectively utilized as laundering vehicles.

At present, there are few proactive or reactive mechanisms at the regulatory level to combat money laundering through companies in Canada. Police cases indicate that enterprise criminals abuse both the government regulatory bodies as well as the legislation. However, the weaknesses within the government regulatory bodies are most acute.

Provincial and federal legislation, while not directed specifically at money laundering, contain certain provisions which can prove to be helpful in tracing of illicit funds.

The offices which incorporate and register companies, on the other hand, are rendered virtually impotent to even attempt to deal with this problem. Stemming from a mandate which empowers these bodies to act as nothing more than registry offices, it could even be argued that they facilitate money laundering. By inadvertently allowing enterprise criminals to invest in companies operating in Canada, they assist in the legitimization of the profits of crime, effectively putting this money out of the reach of law enforcement.

The commingling of licit and illicit funds in legitimate businesses is a concern that extends beyond money laundering.[6] As is stated in The Business of Crime:

> "...Both "laundering" and "infiltration" are activities indicative of high level, organized and sophisticated criminal activity, whether motivated by a desire for legitimacy, or by the wish to disguise ongoing criminal activities." (British Columbia, Ministry of the Attorney General, 1980, p.28)

Prior to the passing of the Proceeds of Crime legislation, law enforcement in Canada was more concerned with what were then the predicate criminal offenses rather than with the secondary laundering/infiltration types of activities. As the Business of Crime emphasizes, this law enforcement focus allowed the criminals to "legitimate" their financial empires, to monopolize segments of the economy, and thereby to influence and corrupt politicians. Legitimized wealth equates to power. If the wealth is based on criminal proceeds, the power becomes a greater threat to society.

Laundering of illicit proceeds through the formation of companies, and hence infiltration into legitimate businesses for the purposes of laundering, is now a criminal offence and can therefore be targeted directly by law enforcement--with the assistance of the regulatory bodies.

The existing regulatory bodies have the capacity to take on these additional responsibilities. They have the infrastructure and expertise. Moreover, the updating and computerization of their operations and records have meant a greater sophistication in information storage and retrieval. National and provincial databases are available and can be expanded to provide comprehensive information throughout the country. Finally, these regulatory bodies have sufficient legislative powers to assist in the tracing of illicit funds. What is noticeably absent among regulatory bodies at this point is both an awareness of the problem of money laundering through the incorporation and operation of companies and the will to combat this problem.

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[6] The U.S. RICO statute was passed due to a concern with the infiltration of organized crime into the legitimate American economy. The Presidential Task Force on Organized Crime (1967) provided the impetus for Congress to deal with this problem.

Future changes in the mandate, responsibilities and available resources of these regulatory bodies, while not a panacea to the problem of money laundering, could play an important part in the overall effort to comprehensively address the problem of money laundering in Canada.

CHAPTER SIX

MISCELLANEOUS MONEY LAUNDERING VEHICLES

I. INTRODUCTION

The economic sectors examined in the preceding chapters of this report are by no means an exhaustive inventory of laundering vehicles used by criminals. This report has emphasized throughout that the potential methods of money laundering are nearly limitless.

Even within sectors of the economy where there are few police cases to indicate that a particular method is currently being used,[1] it is important to acknowledge these potentially vulnerable industries in this report. If laundering is possible though the mechanisms and services offered by any financial/business sector of the economy, one must assume that some launderers are making use of the facilitating features. In this chapter, the following industries will be discussed:

- gold;
- gems;
- expensive purchases (automobiles, planes, boats, art);
- insurance industry; and
- legalized gambling.

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[1] Or is currently being detected by the police. Relying on police cases to identify laundering schemes reveals only those schemes that are known to the police. The cleverest launderers may be those who use financial/business sectors that are so unexpected that law enforcement has yet to identify them as "vulnerable" sectors.

II. GOLD AS A MONEY LAUNDERING VEHICLE

Gold is a well-established and effective money laundering vehicle for criminal organizations in Canada. The ability to convert a cumbersome amount of cash into a convenient, less suspicious form is an inherent quality that attracts launders to this investment. In addition, gold is readily available through retail outlets and access is unencumbered by government regulation.

In many societies, gold has traditionally been viewed as the only "true" form of wealth. Safe from inflation, currency devaluation and an unpredictable financial world market, gold is a readily recognized and highly convertible form of wealth. Gold is international and can circulate as currency across jurisdictional borders.

In addition to these qualities, gold also satisfies the inherent objectives of the laundering process. It provides the launderer with a means of converting illicit cash into a less suspicious form. It can also potentially provide a means to conceal criminal ownership; little identification is required when transacting in gold and if required nominees can also be used to obscure any links between the laundering vehicle and the beneficial owner. Finally, gold can easily be reconverted back into cash almost anywhere in the world.

A. Police Case Analysis

Gold offers a considerable degree of flexibility in the form in which it can be purchased and hence in the ways in which it can used to launder money. As the following cases

demonstrate, launderers have the option of purchasing gold:

- **in its physical state--bars, wafers and coins;**
- **in certificates; or**
- **through precious metal accounts established at financial institutions.**

1. Bars, Coins and Wafers

Launderers can simply purchase gold in its physical form. The traditional "cash-and-carry" approach to purchasing gold in bars, coins or wafers enables the buyer to circumvent the considerable paperwork, storage fees and commissions associated with certificates:

> **Prior to being petitioned into bankruptcy, the owner of a oilfeld construction company in Alberta, sold the assets of his business and left the country leaving creditors empty-handed. Using funds generated from the sale of these assets, the subject purchased $400,250 (CDN) worth of gold in one, two and five ounce gold wafers. The wafers were purchased from a Calgary-based coin dealer (Canada, RCMP case files).**

Private bullion dealers and chartered banks are the most common source of gold in its physical form. Jewellers, pawnbrokers, coin collectors and watchmakers will also buy and sell small amounts of bullion. Most chartered banks will buy and sell gold at reasonable rates to established smaller gold dealers. This arrangement allows these dealers occasionally to perform large transactions. Such transactions usually involve little risk to the dealer.

In Vancouver, Toronto and Montreal, there are many precious metal bullion and coin dealers who buy and sell on a large

scale. The larger multi-service currency exchange houses will also perform this role, as they possess the prerequisites: certain degree of financial expertise, the ability to conduct large transactions, secure business premises, and a large safe.

2. Certificates

Gold can also be purchased in a "certificate" form. The term "certificate" applies to any document which states that an individual has title to a specified quantity of a precious metal. Certificates can be purchased at chartered banks, trust companies, bullion dealers and larger foreign currency exchange dealers. Chartered bank certificates are redeemable at any of the country's chartered banks. Certificates from a trust company or a private bullion dealer are usually redeemable only with that company:

> Among his other laundering activities, an Edmonton drug trafficker, converted illicit cash into gold certificates. The RCMP discovered that between 1979 and 1986, he had purchased over 300 ounces of gold in certificate form. (Canada, RCMP case files).

Certificates offer gold investors several financial advantages:

- there is no provincial sales tax on the purchase of certificates, while tax is charged on coins, and
- investors who buy certificates also avoid other expenses, such as bar charges, which are normally levied on the physical delivery of gold.

3. Precious Metal Accounts

Cases indicated that launderers have established precious metal accounts or have used existing trading accounts at brokerage firms to invest in precious metals:

> A stock promoter used a trading account established at a brokerage firm located in a tax haven country to launder the proceeds from a market manipulation scheme. He had used the account, in part, to invest in precious metals (Canada, RCMP case files).

In an active market, where the price of an ounce of gold can change dramatically in a few minutes, neither certificates nor the physical purchase or sale methods are appropriate for the sophisticated investor. For those who wish to speculate in the precious metals market, gold accounts offer the ability to buy and sell instantly over the phone. Precious metal accounts can be accessed through chartered banks, brokerage firms and bullion dealers.

While chartered banks are the preeminent outlet for transacting in gold, launderers will often purchase gold from other businesses, such as private bullion dealers, because there is less potential for scrutiny.

However there often is a role for banks in laundering processes involving gold. Substantial amounts of gold from legitimate private bullion dealers are purchased with certified cheques to avoid the suspicion inherent with large amounts of cash, highlighting the intermediary role banks play in a laundering scheme involving gold.

B. Regulation of the Gold Market in Canada

Gold bars, coins and wafers circulate freely in Canada. Above a certain purity, gold (other than certificates) is a non-dutiable commodity which can cross Canada's borders unhindered and unrecorded. Unlimited quantities of gold can be imported and exported.

The Federal Department of Consumer and Corporate Affairs, administers the Precious Metals Marking Act (R.S.C. 1985, c. P-19) which regulates the qualitative aspect of precious metal retailing. The Department ensures that ounce gold wafers do, in fact, contain one ounce of 99.99 percent gold. However, no legislation in Canada directly governs the purchase and sale of precious metals.

The purchase and sale of gold was closely regulated in the past. From 1932 to 1956, the Gold Export Act (S.C. 1932, c. 33) empowered the Federal Government to prohibit the export of gold coin or bullion, unless approved by the Minister of Finance. The purpose of this act was to protect the gold reserves of Canada from a dangerous reduction in volume as a result of a British Government decision to take the pound sterling off the gold standard.

Various regulations, known as gold export licence regulations, governed the export of gold from Canada. In 1956, all Gold Export Act regulations were revoked. No subsequent regulations were ever instituted, and the entire act was repealed in 1983 (Miscellaneous Statute and Repeal Act, S.C. 1983, c.149), leaving the sale and purchase of gold in Canada unregulated.

The lack of government regulation specifically aimed at gold allows criminal launderers easy access to this precious metal as a laundering vehicle. Thus, gold which has been purchased with illicit money in Canada can circulate freely inside and across Canadian borders. Moreover, there are no reporting requirements which would compel a retailer to report the sale of a large amount of gold or an individual to report to Canada Customs the movement or gold over Canadian borders.

However, there is legislation which potentially could be used to regulate the institutions which facilitate the sale of gold. For example, the Bank Act (R.S.C. 1985, c. B-1) could regulate chartered banks in their role as an intermediary in gold sales. As well, the government regulatory bodies charged with administering such legislation could assist in notifying authorities in cases involving "suspicious" gold purchases. The following fragments of records may assist law enforcement to compose a paper trails between the gold and the criminal.

1. Identification

Two pieces of identification are usually required in order to purchase gold certificates at a Schedule "1" chartered bank. Reselling the certificate for its cash value at a bank requires the same identification. Unless otherwise specified at the time of purchase, precious metal certificates are only redeemable by the person who purchased them.

In general, banks prefer to deal only with account holders. However, this "know your client" policy may in reality be deceptive, since launderers will often make a deliberate effort to cultivate proper business relationships with banking institutions.

Most chartered banks and other deposit-taking institutions, nevertheless, will deal with non-customers if proper identification can be produced and, in some instances, if credit checks are performed. Thus, launderers with proper identification can use banking institutions to purchase gold. Whether the present identification requirements serve to deter the criminal element from laundering at chartered banks is unknown.

In contrast, most private bullion dealers do not require identification from clients transacting in gold. Launderers therefore do not risk having to reveal the source of the funds or the identity of the criminal enterprise.

2. Conventional Means of Payment

Most chartered banks encourage those transacting in gold to maintain accounts at a branch, as such accounts can be debited or credited directly. However, if the client and the transaction do not appear suspicious, banks will conduct gold transactions with cheques or even cash.

The most common form of payment to a private bullion dealer is a cheque. Over a certain amount (usually $2,000 to $5,000), most bullion dealers require a certified cheque.

In general, the large scale laundering of illicit cash generated from a street transaction would be impractical at bullion dealers. The high cost of large amounts of gold would make cash transactions questionable.

Some bullion dealers discourage or refuse to deal in large amounts of cash. However, competition among the smaller bullion firms often means that customers making cash transactions receive little scrutiny and may even be encouraged. When the source of the cash is not checked, the launderer has unhindered access.

3. Records

For gold transactions at a chartered bank, a purchase order must be completed and maintained by the bank branch. The information on this purchase order includes the name of the customer, the account number, and the amount and form of the gold. Such information would be useful in a tracing investigation and could, in turn, lead to the identification of other relevant records on the customer.

If identification is required by a bullion dealer, this information is recorded and maintained along with other information, such as the date and location of the transaction. Such information would provide a starting point in a money laundering investigation. In contrast, those firms which do not require identification will have few records of value to law enforcement.

Because cheques are a common source of payment, a cancelled cheque would also prove to be a valuable record for law enforcement. A copy of the cancelled cheque would be maintained by the bank of the bullion dealer. However, if the individual has used a bullion dealer in order to avoid scrutiny by the banks, likely a cheque will not be used for payment.

4. Recording of Serial Numbers

Chartered banks record serial numbers for all transactions involving bullion, but this practice is not generally replicated by private bullion dealers. Once gold bars are in circulation, the serial numbers stamped on the bars are not useful for the purpose of tracing, as launderers use a variety of outlets to buy and sell gold.

No documentation is necessary to purchase or sell gold at most bullion dealers; hence, there is no real gain from the recording of the serial numbers.

III. PRECIOUS GEMS AS A LAUNDERING VEHICLE

As a laundering vehicle, precious gems possess similar attributes to gold. First, they satisfy the conversion requirements of the laundering process, that is, illicit cash is converted into an inconspicuous asset, in this case, precious gems. Especially appealing to launderers is the physical compactness and portability of gems and jewellery.

A large amount of cash can be converted into a small amount of gems which can then be easily transported and concealed. This of course is a valuable attribute for transborder movements in the laundering process. Precious gems can also be easily converted back into cash almost anywhere in the world.

Precious gems are available in two forms: set and unset. When set, they take the form of jewelry and can be purchased at retail jewelry stores. Precious gems in this form are attractive to launderers because purchases can be made in cash without suspicion and do not require identification. If a particular situation does appear to pose some risk to the launderer, nominees can easily be used. Precious gems can also be purchased with illicit funds for private consumption, satisfying the personal tastes of the criminal.

The lack of identification combined with the use of cash means retail outlets maintain few records which could assist a laundering investigation. Moreover, many legitimate jewelry retailers will purchase jewelry from their customers, allowing the launderer to convert jewelry back into cash.

Expensive unset gems are a rare commodity in Canada. Accurately pricing gems requires the skill of a trained gemologist and Canada has only a small community of experts trained in this profession. While this factor may dissuade some launderers from becoming involved in gems, it may work to the advantage of sophisticated launderers. Launderers involved in the international movement of precious gems can utilize the expertise found in other countries to develop schemes that involve the manipulation of gem pricing, investment and smuggling.

A. Police Case Analysis

There are few Canadian police cases involving gems as a laundering vehicle. Nevertheless, common laundering scenarios can be identified:

> Illicit funds are used to purchase gems in Canada. These gems are then transported to another country where they are converted into cash. The gems are later brought back to Canada in the form of legitimate investment capital.

> Illicit money is sent from Canada to a foreign country for the purpose of buying gems. These gems are subsequently transported to Canada for resale (Canada, RCMP case files).

Police cases also reveal that launderers take advantage of the difficulty in accurately determining the true worth of gems. The difference between a diamond worth $1000 and one worth $10,000 or even $100,000 is not readily apparent to most people, including customs agents.

A valuable piece of jewelry can be brought into Canada and declared at a value substantially below its actual worth, thereby avoiding suspicion. The services of a professional gemologist are engaged by Customs officials only when there is a large discrepancy between the declared purchase price of a gem and the assessment of a customs agent. Once gems have been imported, they can be resold at their true value. In a reverse scenario, illicit funds can be used to purchase an expensive gem in Canada at a declared value of considerably less. It can then be transported, sold for is real value and the proceeds re-invested.

RCMP cases indicate that launderers will purchase set precious gems as jewelry to satisfy their own needs for conspicuous consumption:

> From 1980 to 1984, the wife of a former Chief of Police of Mexico City accused of embezzling millions of dollars collected from municipal fines, lived in Montreal. Upon notification from Mexican authorities, over $1 million (CDN) worth of jewelry, purchased with illicit proceeds, was seized by the RCMP (Canada, RCMP case files).

Other RCMP cases indicate that precious gems will also be purchased unset:

> In 1984, a Canadian attempted to exchange $391,000 (CDN) into U.S. currency at a bank in Las Vegas, Nevada. The currency was subsequently linked to a drug trafficking operation in Canada. Upon arrest, the accused was in possession of a large quantity of diamonds and other precious gems (Canada, RCMP case files).

B. Regulation of the Gem Market in Canada

There are no regulation or reporting requirements for the purchase and sale of gems in Canada. Unlike gold, however, gems cannot legally move across the border unhindered and unrestricted. Gems which are cut and mounted as jewelry must be declared when brought into the country and have a duty, sales and excise tax paid. Gems which are uncut and unset must have duty and sales tax paid.

Thus, if a launderer attempts to smuggle gems across the border, Canada Customs has the power to seize and forfeit this asset. However, seizure and forfeiture would be a last resort. Customs officials will usually allow the individual an opportunity to pay the duties and taxes after discovery of the gems.

Further, sophisticated launderers will simply declare the gems and pay the applicable duties and taxes. There is little reason for gems to attract suspicion of a Customs officer, and the declaration of the gems gives this laundering vehicle further legitimacy.

The availability of jewelry through retail outlets combined with the absence of any regulation allows easy access for the launderer. Further, both set and unset gems can be bought and sold on the "black market," thereby avoiding potential scrutiny altogether.

IV. CASH PURCHASES OF EXPENSIVE ITEMS

Police cases also indicate that many different types of big ticket items are purchased with the proceeds of crime. Expensive jewelry is one such item, but there are many others. Three other big ticket items that deserve mention are automobiles, planes and boats.

> On August 22, 1983 a Stephen Paul Pakozdy purchased a 1980 Porsche for $32,500 in cash denominations of twenty and fifty dollar bills. Two years later, he was convicted of drug trafficking, receiving a fine of $32,000 (Canada, RCMP case files).

> A major South American drug trafficking ring laundered $980,374 between November 1985 and May 1986. The money was used to purchase aircraft to smuggle both drugs and the profits of the drug trade in and out of Canada (Canada, RCMP case files).

> A suspected Windsor drug dealer purchased with cash a 1981 Cadillac Seville, a 1968 Chevrolet Corvette and a 1975 Mustang. In addition, the suspect purchased a boat and trailer for $18,000, of which half was paid for in cash (Canada, RCMP case files).

The significance of these items is that in addition to being purchased with the proceeds of crime, they are used to facilitate the smuggling of drugs and illicit cash. Also, like expensive jewelry, they help to maintain the desired life-style of a prosperous, powerful (albeit criminal) individual.

V. INSURANCE INDUSTRY AS A LAUNDERING VEHICLE

As McQueen states in Risky Business, Canada's $80 billion plus insurance industry represents a popular investment vehicle:

> Life insurance is the second most common financial investment in Canada. While about half of all Canadians own life insurance policies, only one-third own Canada Savings Bonds and one-quarter have registered retired savings plans. Only savings accounts, held by 85 per cent of Canadians, are more popular than life insurance. (McQueen 1985, pp. 2-3).

For the criminal launderer, a life insurance policy can serve an a repository for illicit funds as well as a source of income in amounts over time that will not appear suspicious.

Insurance companies must also re-invest the capital that has been invested with these firms. In order to invest in large projects, such as land development projects, the insurance company may enter into joint operations with private individuals who have additional cash to invest. Since insurance companies are looking for cash investors, there may be few questions asked regarding the source of a partner's funds.

As the barriers that separate the different financial sectors continue to tumble, insurance companies will increasingly offer the type of banking services traditionally favoured by launderers. Some insurance companies are currently offering a type of term deposit instrument similar to that offered by trust companies and also have financed mortgages and government bonds.[2]

A. Police Case Analysis and Laundering Scenarios

It is through its capacity as a financial investment intermediary that the insurance industry can be manipulated to launder the proceeds of crime. The following case demonstrates one example of how the proceeds of crime has been invested in the insurance industry:

> Eugene Stranges was convicted of stealing $120,000 of bingo money from two charitable organizations. During the course of the investigation, police learned that the accused was the owner of a fully paid annuity policy having a value of $140,000. The annuities had been purchased from Manufacturers Life Insurance Co. and Dominion Life Assurance Co. It was later ruled that a portion of the money invested in the annuities was the proceeds of the original crime (A.G. Ont. v. Stranges [1984] 12 C.C.C. (3d) 455).

The Stranges case represents a rudimentary way in which the proceeds of crime can be laundered through the insurance industry. With apparently little attempt by the accused to obscure ownership of the funds, police were able to construct a trail leading from the stolen funds to the laundering vehicle.

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[2] McQueen refers to insurance companies as the "quiet bankers." Through mortgages, they have financed over a million Canadian homes, 30 percent of all Canadian corporate bonds outstanding, 10 percent of all Government of Canada securities, 7 percent of provincial bonds and 17 percent of municipal bonds (see Risky Business, 1985, p.6).

However, the complex nature of the insurance industry, its interconnectedness with other sectors of the economy and society as a whole, and its increasingly international character all provide the potential for sophisticated laundering schemes which can avoid detection and tracing by law enforcement.

Laundering scenarios could easily include the flow of illicit funds through shell or legitimate companies, to an insurance broker (who may or may not be a member of a criminal enterprise), who would then invest with an offshore insurance company, back through a reputable Canadian insurance company, with dividends flowing through a lawyer to the original criminal controlled companies.

B. Regulation of the Insurance Industry

The insurance industry is government-regulated. However, confronted with the problem of money laundering, this regulation suffers from the same deficiencies of other regulated sectors of the economy. In particular, the regulatory mechanisms concentrate on the solvency of insurance companies and the ethics of insurance professionals with little focus of the regulation of customers.

In 1987, the Department of Insurance and the Office of the Inspector General of Banks were amalgamated and became the Office of the Superintendent of Financial Institutions (OSFI) which is accountable to the Minister of State for Finance, and ultimately to the Minister of Finance.

Within OSFI there is a Deputy Superintendent of Insurance and Pensions who reports directly to the Superintendent. The main obligation of this division is to ensure that the insurance companies have sufficient financial reserves to meet their financial obligations to their customers. The term "financial soundness" repeats throughout the literature.

This office issues certificates of registry to new insurance companies wishing to be registered in Canada and to any foreign company that wants to carry on insurance business in Canada. Canadian companies are not required to be federally incorporated however approximately 90% of the insurance companies operating in Canada are registered with this office.

At the provincial level, the Insurance Act of each province monitors the industry by ensuring that all insurance companies doing business in each province are licensed, all insurance agents and brokers are licensed, annual reports are submitted, and provincial legislation is followed.

Federal and provincial insurance statutes impose record retention obligations on insurers. The federal OSFI is granted a right to access the records of all federally regulated insurers and most provincial insurance Acts provide for "investigation of insurers". At the provincial level these responsibilities include having the duty to provide information on any contract of insurance and all books and records on request of the Superintendent.

In addition to government regulation, there are professional associations, some mandatory and others voluntary, for the agents and brokers. The Insurance

Brokers' Association of Canada (IBAC) is the national trade association for the insurance agents and brokers.

A focus of this organization has been on professional development through improved standards of qualifications and ethics of its membership. It maintains licensing courses and educational programs for its member associations and is authorized to administer examinations for the qualification of insurance intermediaries.

These professional organizations and the government regulatory mechanisms could be used to inform the industry officials of the potential use of their industry for money laundering. To date however, similar to many industries where there has not been media attention or political pressure to respond to a money laundering crisis, there is a lack of awareness of money laundering in general within the insurance industry.

V. LEGALIZED GAMING AND MONEY LAUNDERING

The use of legal gaming facilities, such as gambling casinos and race tracks have been well-documented in the United States as laundering vehicles.

The main use of a gaming facility as a laundering vehicle is to provide criminal launderers the opportunity to claim the proceeds of crime as legitimate winnings. As Mangan states:

> "The casino industry is by its very nature a cash intensive business.... The industry is unique in that currency is its product. Casinos perform many services similar to those offered by banks.
>
> They cash personal cheques, money orders and travellers cheques; exchange currency, issue cashiers cheques,

> extend credit, and provide safe deposit boxes." (Mangan 1984, p. 23).

However, it may be misleading to suggest that these banking services are always delivered in a bank-like manner. While not true of all casino operations, experiences from the United States indicate that the casino cash environment, competition, and potential corruption results in problematic credit practices[3], and the courting, with various complimentaries, of known criminals. These organized criminals are in fact recognized by some casino managers as being "good business" for their establishments.

The U.S. Drug Enforcement Administration have identified a number of money laundering schemes including:

- simple declaring of gambling winnings, subject to normal taxes (in U.S.) to legitimate drug proceeds;
- simple exchange of small denominations for larger bills;
- casinos knowingly investing traffickers funds, wiring the money to off-shore accounts, and providing loans back to the "client";
- use of two or more casinos who transfer money between traffickers and between jurisdictions including to designated accounts in affiliated casinos outside the United States. Once transferred the casino will issue credit in the appropriate amount to whoever controls the account. (Mangan, "Casinos and Drug Money", 1984, p.22)

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[3] This remains true even after the recommendations made by the 1983 New Jersey Public Hearing on Statutory and Regulatory Controls Over Casino Credit and Casino Industry Credit Practices (Trenton, New Jersey, March 1-4, 1983). See Beare and Hampton, Legalized Gambling: An Overview, 1984 p.114.

Legalized gambling in Canada is a multi-billion dollar industry--with a lingering "church basement" approach to regulation and enforcement. Research by the Ministry of the Solicitor General indicates that across Canada, gaming activities such an casino operations, bingos, and carnivals are all vulnerable to corruption and suffer from a lack of uniformity of regulation and enforcement between jurisdictions.[4]

Police intelligence is aware of instances where race tracks have been used in Canada in laundering schemes whereby winning tickets are purchases by the launderers. The legitimate winner receives cash for his ticket plus a commission. The launderer receives the ticket stub as proof of a legitimate source of funds.

Likewise, winnings from lotteries also have been claimed and serve to cause ambiguity during net-worth analysis of proceeds of crime cases:

> A drug trafficker increased his net worth from $86,000 in 1981 to $302,000 in 1984. A financial investigation as well as a drug investigation were carried out during which investigators found 21 bank accounts. Langan was convicted of conspiracy to traffic in drugs and was charged with possession of the proceeds of crime and tax evasion. Part of his argument against the "proceeds" charge was that he had won $25,000 in a lottery (Canada, RCMP case files).

While few police cases have identified laundering through gaming activities in Canada, this remains an important area to watch. As gaming activities expand and diversify, regulatory and enforcement efforts must become increasingly sophisticated. Gaming technology and personnel move back and forth across the Canada/U.S. border. It is to be expected that knowledge of laundering schemes and skills are already being shared.

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[4] Beare, Jamieson and Gilmore, Legalized Gaming in Canada, Ministry of the Solicitor General, User Report series, 1988.

Casinos are now regarded as "financial institutions" in the United States for the purposes of reporting under the Bank Secrecy Act. Form 8362 must be completed for each deposit, withdrawal, exchange of currency or gambling tokens/chips which involves a transaction in currency of more than $10,000. While recognizing that there are alternative ways of making gaming establishments accountable for their cash transactions, an adequate method must be uniformly implemented across the Canadian gaming industry.

IV. CONCLUSION

Each of the laundering vehicles discussed in this chapter had some drawbacks that might make them less favoured by launderers in Canada. However, once other more popular methods are tightened to involve additional risks to the criminal, these alternative methods may become more attractive. Consideration given to regulations and legislation must acknowledge a wide range of potential laundering schemes.

CHAPTER SEVEN

MONEY LAUNDERING - AN INTERNATIONAL PERSPECTIVE

I. INTRODUCTION

Money laundering is an international activity that knows and respects no borders. Many criminal enterprises are complex, international organizations that exploit, for the purposes of their laundering operations, the limitations inherent in traditional law enforcement and regulatory structures, the existing international financial infrastructures and the deliberate policies of countries.

Traditionally, countries have been interested in a crime only when it was committed within their jurisdiction. Unless there were victims in the country, there was little incentive to assist foreign authorities with their investigations of crimes. The transborder movement of illicit money takes advantage of these limitations of national and regional law enforcement and the restrictions of international criminal investigations.

Furthermore, countries have been hindered in international criminal investigations due to differences in language, disparate legal systems, diplomatic obstacles, lack of ratified mutual legal assistance treaties, strict secrecy laws and a general lack of cooperation among law enforcement in different countries. As a United States Senate Staff Study, Crime and Secrecy: The Use of Offshore Banks and Companies states:

> "Internationalized crime benefits from the lack of uniformity in law, nation to nation, the limited

> jurisdiction of the police, as yet primitive international police cooperation...and the sheer size of international business transactions...both legislation defining crime, and the investigations of it in this complicated, professional and concealed form, lag" (United States Senate, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, 1983, p.47).

Tax haven countries play a key role in the international laundering process.[1] Their strict secrecy laws conceal the true ownership of illicit money as well as obscure the paper trails from the laundering vehicle to the criminal enterprise.

Finally, recent trends towards liberalization of international trade and commerce, combined with decreased government regulation, will have profound implications for the money laundering industry. Money laundering will become easier as the barriers to international business and commerce are eliminated and international transactions become more commonplace. This change will make detection of these transactions by law enforcement and regulatory bodies more difficult.

In sum, the transborder movement of illicit monies must be seen in the context of the inherent objectives of money laundering. The key advantage of international laundering is the ability to conceal true ownership by obstructing any trails leading from the funds to the criminal enterprise.

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[1] The term "haven" in this context is applied to countries which have deliberate policies to protect the owners of assets from detection. Numbered bank accounts, nominee corporations, and laws that subject bank employees, lawyers and other professionals to criminal or civil liability for revealing any information about the true ownership of assets are characteristics of haven services. There is no agreement as to which countries are or are not haven countries. For example, the 1990 U.S. Kerry Report (p.3) lists Canada with Switzerland, the Bahamas, Luxembourg, Hong Kong and Panama as being "among the jurisdictions most used to launder drug money from the United States."

II. POLICE CASE ANALYSIS

Based upon an empirical analysis of Canadian police cases, it is estimated that over 80 percent of money laundering performed in Canada involves an international component.[2]

Police cases indicate that there are essentially three stages to an international laundering process involving criminal enterprises in Canada:

- the exporting of illicit funds;
- the use of these funds offshore; and finally
- the repatriation of the illicit funds.[3]

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[2] While this percentage is based solely on the money laundering cases identified by the police, it may be relevant that the United States estimates that only 10 percent of illicit drug money generated in the U.S. moves into international circles. See The Cash Connection: Organized Crime, Financial Institutions and Money Laundering, October 1984. The weakness of the U.S. estimate is that it is based not on actual police cases but rather on an "estimation of an estimated" total illicit drug market. The President's Commission on Organized Crime estimated in 1984 that $5-$15 billion of the estimated $50-75 billion in illegal drug money moves from the U.S. into international financial channels.

[3] In addition, police cases reveal that illicit money entering Canada is not exclusively tied to money being repatriated by indigenous criminal enterprises. In other words, foreign-based criminal enterprises are exporting their proceeds of crime to numerous countries, including Canada, for the explicit purpose of laundering.

A. Exporting of Illicit Funds

The first stage in any international laundering operation involving Canadian criminal enterprises is to export the illicit capital from this country. The export of illicit funds satisfies three objectives: to pay for illicit drugs, to transport money back to a centralized foreign criminal enterprise and to launder money. While it is the third component with which this analysis is concerned, there is overlap between the categories, and the same channels will inevitably be used for all three objectives.

A diverse range of methods are used to relocate the funds outside Canada. However, prior to exporting, the criminal enterprise must decide whether to convert the illicit cash to an alternative form or to simply physically carry the cash proceeds. While each alternative possess advantages, police cases indicate that the former is often performed and as such, will be dealt with in detail.

1. Conversion of Illicit Cash to an Alternative Form

Illicit cash is converted into another form in order to avoid suspicion associated with large amounts of cash and to facilitate the ease with which it can be transported internationally. Police cases reveal that the forms of conversion often used include U.S. cash, negotiable instruments, wire transfers, and gems.

i. U.S. Currency

The objectives behind converting Canadian into American cash are based on the common acceptance of U.S. cash as the international currency, Canada's geographical proximately to the United States, and the ability to simultaneously conduct denomination exchange.[4] Two cases illustrate the preference for U.S. (and Swiss) currency:

> On one occasion, cash was taken to a currency exchange house in Toronto and converted to American dollars and Swiss francs. 280,000 American dollars and 500,000 Swiss francs were smuggled across the border in suitcases with the final destination being the Cayman Islands where it was deposited in an account of a shell corporation (Canada, RCMP case files).
>
> During a four month period in 1986, a Canadian drug trafficking organization transported over $22 million in U.S. currency to Mexico in order to pay for drugs as well as to launder the proceeds of Canadian drug trafficking (Canada, RCMP case files).[5]

The vast majority of cases indicate that following a U.S. currency exchange, the cash will be physically smuggled across the U.S. border.

ii. Negotiable Instruments

Canadian currency will be converted to negotiable instruments, such as bank drafts, certified cheques, money orders, etc. and then transported internationally:

> A criminal organization was accused of laundering over $31 million between 1978-1985. The illicit funds were transformed into bank drafts and then physically transported out of the country (Canada, RCMP case files).

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[4] For an in-depth analysis of the motives behind currency exchange, see Chapter 2: Money Laundering and Currency Exchange Houses as well as Section 2 (iii) of this chapter.

[5] These smugglers were apprehended by U.S. Customs and the monies seized for failure to report the movement of cash across U.S. borders.

The primary appeal of bank drafts for laundering is that they can be transported easily, and are cashable at most financial institutions, both domestically and abroad. A single bank draft can represent millions of dollars, and can be easily concealed on a person when passing through customs. The drafts can be obtained in any desired currency so as to facilitate their cashing in the U.S. or other countries. Cases reveal that most bank drafts drawn in Canada are in U.S. funds.

iii. Wire Transfers

The significance of wire transfers within the international movement of illicit monies cannot be over-emphasized. This vehicle represents the most efficient and, according to police cases, the most popular means to move illicit funds internationally.

The wire transfer accomplishes two goals--the conversion of cash into another form (albeit an intangible form) and the means to transport the funds. Wiring funds has the unique advantage of sending funds virtually instantaneously to a correspondent bank[6] almost anywhere in the world. Cases reveal that the United States and tax haven countries located in the Caribbean represent the most popular destinations for funds wire transferred out of Canada:

> A drug trafficker would transport the cash proceeds of his business to local branches of the Bank of Nova Scotia and wire transferred to the Cayman Islands. On one occasion, using an alias the trafficker made five,

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[6] A correspondent bank is defined as "A bank in one country which acts so required for a bank in another country. The relationship is one of agency" (Perry, p. 54.). The services provided are generally the collection and payment of foreign funds stemming from trade transactions. Correspondent banks often keep accounts with one another. (Gart 1989, p. 256)

> $21,000 wire transfers to a Barclay's Bank in the Cayman Islands (Canada, RCMP case files).

When utilizing wire transfers, launderers benefit not only from the instant transmission of funds out of the country, but also the advantage of being able to transfer funds between various foreign bank accounts, different banks and different countries while remaining in their countries of origin:

> A large scale fraud artist in Toronto opened an account at a Toronto branch of the Bank of Cathay using a false Chinese passport as identification. Illicit funds were deposited into this account and then wire transferred to the headquarters of the bank in Taipei, Taiwan. From there it was transferred to a branch of the Chemical Bank in Taipei. The Chemical Bank then transferred these funds to a Chemical Bank branch in Detroit. The RCMP estimate that $52 million was laundered in this manner (Canada, RCMP case files).
>
> In another scenario, money was deposited in a bank in South East Asia, transferred to a foreign-based bank in Canada. This branch presented the launderer with a certified cheque for the amount transferred. This cheque was temporarily deposited in a Canadian bank for further wire transferring to banks in the United states (Lamphier 1986, p.48).

These police cases illustrate the ease with which wire transfers are used to move funds through a variety of different banks in a variety of different countries. The objective is often to cause a "layering" of transfers which becomes the laundering scheme.

The prime disadvantage of electronic wire transfers, relative to withdrawing and physically transferring the money, is that some records of the transaction are maintained by the financial institution. However, often the information given to the banks is not verified, and little is known about the various parties to the international transfer--the senders, the receivers, beneficiaries or third parties. These problems are compounded when wire transfers are used in conjunction with tax haven countries. The true identity of the recipient can be effectively hidden by strict secrecy laws.[7]

iv. Precious Gems

Cash can be used to purchase precious gems which in turn are smuggled out of the country. The advantage of this method lies in the compactness and portability of gems. A large quantity of cash can be converted easily into a small quantity of gems. Moreover, if the launderer is uncomfortable with smuggling gems out of the country, the gems can be declared at the border.[8]

2. Transporting Illicit Funds Out of the Country: Funds, Motives and Mechanisms

The form in which the illicit funds exit the country is often determined by the mechanisms used to transport the illicit proceeds and the specific reasons for the movement. Police cases reveal the following common means and institutions used to facilitate the movement of illicit funds across Canadian borders: physical smuggling by the launderer, deposit-taking institutions, foreign currency exchange houses, informal banking systems, utilization of a professional courier service, and travel agencies.

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[7] For in-depth analysis on wire transfers and police case studies, see Chapter One: Money Laundering and Deposit-Taking Institutions in Canada.

[8] For an in-depth analysis of gems and their international movement, see Chapter Six: Miscellaneous Money Laundering Vehicles.

The above-mentioned institutions do not by any means constitute the only way in which illicit funds are transferred offshore. Others include: shipping companies, real estate agencies, brokerage firms, finance companies and international trading companies. Schemes can be devised using each of these facilities that result in the ability to send funds offshore, the appearance of a legitimate guise under which illicit funds can be sent and record-keeping practices that conceal the true source of the illicit funds.

i. Physically Smuggling Cash Across the Border

Launderers will often not convert illicit money into another form and simply attempt to smuggle the Canadian currency out of the country. Physically transporting cash out of the country is one of the riskiest methods employed to launder money. If successful, however, it can also prove to be the most effective because there is no paper trail left behind. The techniques used to smuggle illicit cash out of the country are varied, but usually involve transportation or concealment methods similar to drug smuggling methods (Canada, RCMP, National Drug Intelligence Estimate: 1987/88, p. 98):

> One of the most popular smuggling methods is to conceal cash in a car and drive across the American border. Other more elaborate operations have identified cash, usually transported in $100 denominations, hidden in luggage or body-packed and flown to the desired destination (Canada, RCMP case files).

Members of criminal organizations will either physically carry it themselves or delegate this task to hired couriers who are attached to the criminal organization. Lawyers, accountants or businessmen who operate a money laundering service for a fee are also used. Finally, criminal organizations may utilize the services of professional armoured and express courier services.

As previously indicated, the physical transportation of money may be preceded by a straight cash-for-cash conversion; either to American currency and/or to the same currency in larger denominations.

ii. Deposit-taking Institutions

Canadian deposit-taking institutions, in particular chartered banks, offer the most complete line of services used to move money out of the country. Negotiable instruments, currency exchange and denomination exchange are used to convert illicit proceeds. In addition, banking institutions offer a service which not only converts illicit proceeds into another form but also spirits the money out of the country--the wire transfer.

Canadian banks operate international departments and foreign subsidiaries worldwide. In addition, a number of foreign banks located in Canada perform a parallel service. In both Canadian and foreign banks, the person who wishes to invest abroad can receive guidance on how best to transfer his/her funds.

Some of this advice may extend beyond strictly legitimate transactions. According to the Enterprise Crime Study Reports, there are "hundreds of agents" of foreign banks who operate in a semi-clandestine manner and are "able to provide consulting services and arrange or facilitate the movement of money from Canada to a bank in a foreign jurisdiction" (Canada, Department of Justice, 1983, p. 47).

iii. Foreign Currency Exchange Houses

Cases indicate that foreign exchanges are utilized to exchange Canadian currency to U.S. currency or U.S. dollar monetary instruments prior to physically smuggling the funds across the border. As an additional service, some exchange houses offer a wire transfer service. While they do not have the facilities to wire transfer funds directly, they work in cooperation with banks for this purpose. This "layering" lends credibility to the transaction and protects the customer from suspicion:

> Using a corporation as a front, the criminal can engage a foreign lawyer or business agent to represent his interests in a country where his corporation also has status. He then makes a large cash transfer to his corporation through the currency exchange. The foreign bank will accommodate the money exchange entity in the transfer, because they frequently have legitimate business dealings with each other. (Canada, Department of Justice 1983, p. 47.)

iv. Informal Banking Systems

In additional to formal and semi-formal banking systems, a network of informal banking systems exist. Several different terms are used for similar operations: "hawala" or "hundi" in India and Pakistan; "chop-shop" in South-East Asia; and "chiti" banking. These are international banking systems that generate no audit trail and rely solely on established interactions between contacts in countries including Canada, U.S., U.K. and Australia plus the countries where the systems originate:

> In its simplest form a customer approaches a hawala banker in India and asks to have an amount of money transferred to Toronto. The cash is given to the hawala broker who gives the customer a receipt in the form of a value-less, unidentifiable object with a number on it such as a torn playing card, bus ticket or

> a two-rupee note plus a name and address in Toronto. A relative/friend, or the customer himself, goes to this address in Toronto and upon quoting the number will be given the cash.

More complicated schemes involve the movement of commodities such as gold, drugs, and/or arms, with cash flowing invisibly among networks. In addition to the transfer of funds out of the country, these systems serve to facilitate a better rate on the exchange and in some operations the brokers will orchestrate invoice manipulations to legitimate the funds received.

The two brokers involved in a hawala type of cash transfer do not immediately settle their accounts but rather wait until there is a request for funds to move in the reverse direction. This system used to rely on the trust between family or clan members. However, as the hawala system spreads, there is more evidence that fear of violence operates to keep the partners honest.

The amounts of money transferred by these informal systems of banking can be extremely large. Six Hawala bankers in the United Kingdom recently admitted to a combined annual turnover of 80 million pounds[9].

The only way for a country to estimate the activity of this underground banking system is to study the fluctuations in the value of the black market dollar. The lower the value, the more active the market (Blackhurst, June 1988).

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[9] Working draft of the Financial Action Task Force Report on Money Laundering, Working Group on Statistics and Methods, November 30, 1989.

v. Utilization of Armoured Courier Services

The use of armoured courier services to export illicit proceeds has been well documented in investigations conducted by the RCMP. These courier services are differentiated from individual "smurfs" utilized by criminal enterprise in that they are professional couriers often used unwittingly to transport illicit money internationally.

Cases reveal that couriers are attractive to launderers because in their ordinary line of business they transport valuable goods such as precious metals, gems, large monetary sums, as well as other negotiable instruments such as stocks, bonds, and bearer cheques:

> A launderer for a drug trafficking organization often utilized Brinks trucks to transport U.S. currency between American banks in Buffalo and Canadian banks in St. Catharines. It is estimated that Brinks moved $9,000,000 (US) between the two countries over a two year period (Canada, RCMP case files).

Armoured couriers are also appealing to the launderer due to the absence of regulatory requirements governing the goods they transport, and the ease with which these couriers pass through customs. The armoured couriers do not verify the contents of the various packages, envelopes and bags to be delivered.

Should any of the goods to be transported require special documentation for custom's purposes (as with certain cash amounts and financial instruments leaving the U.S.) it is assumed by the armoured courier that all such paperwork has been completed by the client. The only information concerning the nature of a shipment that is recorded is its value. This is done for the purposes of insurance in the event that a shipment is stolen. The carrier company is obliged to refund only the declared value of the contents of any given shipment.

When an armoured courier takes possession of goods to be delivered, these goods are not examined in any way to verify that the contents correspond to that listed by the customer. For the courier to do so would violate its contractual obligation with the client to ensure the confidentiality of the transported items. In fact, in the case of extremely valuable shipments, a seal is placed on the bags or envelopes to be delivered which reveal any unauthorised attempts to open such goods.

Armoured carrier officials have acknowledged that it is quite conceivable that goods which they have transported have been significantly under valued (LaFontaine 1989). However, with no examination of the contents of the goods they transport, it is impossible to estimate the degree to which this occurs, and the dollar values involved.

However, courier companies assume a legal duty to ensure that they do not transport anything illegal. Given the confidentiality of their shipments, they must rely on policies that emphasize knowing their clients. These companies attempt to screen their customers so as to avoid aiding in the illegal transportation of goods across international borders.

vi. Express Couriers

In addition to armoured couriers, money launderers also use "express" couriers to move illicit funds abroad:

> A drug trafficker in Edmonton laundered in excess of $250,000 in a three month period in 1989. Bank drafts were purchased through a local branch of the Bank of Montreal and then shipped via Purolator Courier to

various cities in the United States (Canada, RCMP case files).

Numerous international "express" couriers offer one-day delivery service to most destinations in North America. Bank drafts, and other negotiable instruments, security certificates, precious gems, and even cash can be couriered in this fashion internationally thus completing an important phase of the laundering process.

While many express couriers refuse to carry certain items often used as a part of a laundering process most do not check the contents of a package, nor do they have the power to open it.[10] Couriers will instruct the shipper to state, in general terms, the contents of the package. Under contractual agreements between the courier and the shipper the contents must accurately reflect this description. There is little onus placed on the courier company to scrutinize its customers for potential criminals.

In general, there are two means available to the express courier to verify the contents of a package. First, couriers picking up packages are trained to spot suspicious packages. If the shape or weight of the package does not correspond to the declared contents the courier may report the situation to the security department of the courier company.

Second, if the package opens during transit and prohibited contents are discovered, couriers must notify the security department. If criminal activity is suspected, law enforcement is notified.

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[10] Federal Express Ltd. has begun to x-ray the contents of all packages that are processed in its Houston "hub." This process was instituted in part to identify possible narcotic movements. This procedure has not yet been replicated by Federal Express in Canada.

There is no government regulation of couriers except for requiring companies to be licensed within the provinces and countries through which they move goods or unless the goods being shipped are subjected to specific government regulations (eg. prescription drugs under the Food and Drug Act).

Express packages entering or exiting Canada must go through Customs Canada. Customs now operates a Low Value Shipment (LVS) Service expressly for professional courier services. Customs agents are instructed to "peruse" each package to ensure the proper information, such as importer or exporters (consignee) name and address, quantity (number of pieces) and total, weight, and the description and value of goods. The Customs agent is then to determine whether the package is consistent in shape and weight with the described contents and the value stated on the package. (Canada, Revenue Canada Customs and Excise, "Customs Low Value Shipment Service: Procedures" December 1989).

At the end of the examination, the package is either released or subjected to a secondary examination. A secondary examination is undertaken if the package appears suspicious in any way to the Customs Officer. During the secondary examination the Customs officer can X-ray the package (if a machine is available) or open the package and physically examine its contents (Canada, Revenue Canada Customs and Excise, "Customs Low Value Shipment Service: Procedures" December 1989).

It is impossible to determine how frequently express couriers are used in international laundering schemes. Moreover, the ability to detect illicit funds transported by a courier service is made extremely difficult by the sheer volume of packages couriered. On any given day, the Pearson Airport Customs office in Toronto clears an estimated 5,000 pieces of courier-type goods (Becker 1989), while Purolator Courier (Canada) Ltd. moves over 1,250,000 packages a day (McIver 1989). One might imagine that a non-descript express package marked "business letters" or "interoffice correspondence," without additional intelligence to suggest otherwise, would receive only a perfunctory glance by either the courier company or custom's officials.

vii. Travel Agencies

Travel agencies provide a means to move illicit money internationally based on the multinational nature of their operations. Travel agencies can arrange to transfer large sums of cash directly to another country where an affiliated office is located while effectively avoiding suspicions.

> A travel agency in Toronto maintained an unrecorded sideline business that wire transferred funds to third parties in foreign jurisdictions utilizing tour guides as couriers for fictitious tickets and travel arrangements. This discovery was made in the course of a drug trafficking investigation (Canada, RCMP case files).

Travel agencies are perfect foils for laundering operations, because to account for the source of such funds, the travel agent need only show records of some overseas service performed for his/her business and for which payment is due. While a routine audit of an agency's books by the provincial regulatory body responsible for travel agencies might reveal suspicious transactions, proving that such bogus transactions were not in fact legitimate is difficult.

Further, regulatory agencies concentrate on ensuring that the financial health of the agency is satisfactory and that records are being kept in the prescribed fashion. There are few if any examination procedures concerned with specific transactions.

B. The Use Of Illicit Funds Offshore

Once the illicit funds have been successfully moved offshore, they will be laundered further. How the illicit money is laundered offshore is significant for it will usually dictate how the "cleansed" money is repatriated to Canada.

The many different countries which have been implicated in laundering schemes involving Canada can be divided into two general groupings: tax haven and non-tax haven countries.

1. Non-Tax Haven Countries

Police cases reveal that numerous non-tax haven countries constitute the destination of illicit money leaving Canada. This list includes: Puerto Rico, Lebanon, Mexico, Great Britain, Argentina, Italy, Netherlands, Brazil, France, Taiwan and the United States. The common denominator underlying the use of these countries to launder illicit money is the relatively strict business and financial secrecy laws, plus a varied number of factors, including its geographical proximity to Canada, its position as a central headquarters for the criminal enterprise, familiarity and past laundering experience with Canada, and protection from extradition. The types of laundering vehicles used outside of Canda are essentially identical to those used inside

Canada (eg. banking, securities, real estate, etc.).

The United States is by far the most frequently used country to receive illicit funds originating in Canada. Like Canada, American deposit-taking institutions represent the most popular laundering vehicle available to the criminal enterprise and as such, are often the destination of illicit funds leaving Canada.

Geographically, southern Florida is often the specific destination for Canadian currency:

> Agents of the United States Drug Enforcement Agency raided a Miami home, where they discovered $3 million in Canadian currency - much of it in $1,000 bills. The cash was in the process of being packaged for shipment offshore (Jensen 1989, p. 42).

2. Tax Haven Countries

Police cases indicate that tax haven countries, particularly those located in the Caribbean, are frequent destinations for illicit money leaving Canada. More specifically, tax haven countries popular among Canadian launderers include: Switzerland, Liberia, The British Virgin Islands, Netherlands Antilles, The Bahamas, The Channel Islands, Panama, Grand Cayman Islands, and the Turks & Caicos.

Historically, tax haven countries were originally established to assist business people to avoid taxes in their country of residence. However, as the RCMP National Drug Intelligence Estimate notes, criminal organizations use financial haven facilities not merely because they are tax havens but "rather, they take advantage of the existing infrastructure of anonymity set up for the handling of capital of persons seeking to avoid income tax" (Canada, RCMP 1988-89, p. 101).

The secrecy and blocking laws of safe haven countries enable a criminal enterprise to effectively obscure any connection between itself and illicit funds. Strict nondisclosure laws protect the individual's identity and treat as confidential all other information pertaining to the investments or deposits.

While many areas of the world can be considered tax havens, they do not all possess characteristics which are attractive to launderers. Features favoured by criminal enterprises in their selection of financial havens include:

- little or no tax on foreign earnings of foreign owned corporations;
- commercial and/or bank secrecy;
- tax corporation laws;
- good transportation and communications facilities;
- location near established drug trafficking routes;
- minimal restrictions on foreign currency exchange of foreign corporations or individuals;
- relatively stable political climate; and
- availability of professional and/or business advice and assistance (United States, Department of Justice 1988, p. 11).

In addition, characteristics especially appealing to Canadian-based criminal enterprise include, geographical proximity to North America and countries which have branches of Canadian financial institutions. These characteristics, in part, constitute why tax haven countries in the Caribbean are attractive to Canadian criminal organizations.

Finally, with the development of multinational banking systems and international business and commerce it has become relatively easy to develop sophisticated laundering systems designed to move money, obtained directly from criminal activity into financial institutions located in tax haven countries (Stamler 1984, p. 3).

Once illicit money has found its way to a safe haven country, there are particular services available to the launderer which are not available in non-tax haven countries. Those services are described below.

i. Secret Bank Accounts

In addition to the traditional banking facilities, many banks in tax haven countries provide secret numbered accounts where the names of the depositor are held separate from the accounts themselves. The name may be held by a separate entity, such as a trust company affiliated with the bank. In addition, one banking facility may be made up of numerous corporate entities:

> "For example, the name of the depositor may be held by one corporation, the actual bank account deposited in another and the investment certificate issued by another" (Stamler and Fahlman 1983, p. 65).

Under laws of the country, the institution is not required to reveal the name of the individual or company controlling the account. Once money has been deposited in a secret account they can be used in an way available to a regular banking account:

> A Canadian-based drug trafficking organization at one point operated fourteen secret bank accounts in such countries as the Channel Islands, the British West Indies and Liberia. These accounts were in the names

> of the launderer or that of a shell corporation also registered in the safe haven countries. Illicit funds would be deposited in these accounts either in the form of wire transfers, negotiable instruments or cash smuggled out of Canada (Canada, RCMP case files).

Canada is explicitly intertwined with financial institutions located in safe haven countries in more than one way. Not only do police cases reveal that Canadian drug trafficking organizations use these locals for laundering purposes, but Canadian chartered banks operate branches in many tax haven countries and have been identified on occasions as facilitating the laundering of illicit funds.[11]

ii. Confidential Incorporation Policies

Most tax haven countries have a system providing for the incorporation of businesses and holding entities that will enable a beneficial owner to maintain a high degree of anonymity. These corporations are permitted to carry out business transactions both within and outside of the country.

The corporation will be incorporated by a resident business agent or a lawyer who will be registered as the only resident officer of the company and who is generally forbidden under law to divulge the names of the beneficial owner of the corporation. The true and beneficial owner's name will only be recorded in a government department's books, and these are kept secret by law.

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[11] For greater detail on the role of Canadian chartered banks in the Caribbean, see Chapter One: Money Laundering and Deposit-taking Institutions in Canada.

Corporations are significant for they provide the means for double protection to beneficial owners who require secrecy. First, these companies can be the registered owners of secret numbered accounts, (both within the jurisdiction or in other safe haven countries) or they in turn can be the registered owners of other corporations. In many cases the corporations will most likely be nothing more than shell companies.[12]

Second, besides incorporating companies, criminal enterprises will also invest in existing companies or purchase them outright:

> Between 1983 to 1987 a lawyer for a major drug trafficking organization in Canada purchased eleven incorporated companies from a holding company located in the Channel Islands. They also incorporated companies in Liberia, British Virgin Islands, Grand Cayman Islands, Netherlands Antilles, and Switzerland (Canada, RCMP case files).

iii. Foreign Trusts

A "foreign" trust is created by an individual in a country other than his/her country of residence. A foreign trust is a pact that binds the trustee to deal with the trust property for the benefit of designated persons. Once again the name of the beneficiary is held in strict confidence by the trustee and protected by law.

iv. Resident Agents, Business Managers and Lawyers

Resident or non-resident professionals will often be utilized to incorporate businesses or holding companies, in turn posing as its officers and directors, act as trustees, resident agents and business managers.

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[12] For more detail, see Chapter Five: Money Laundering and the Incorporation and Operation of Companies in Canada.

Lawyers are often used for these purposes because laws generally provide for the maximum protection for the beneficial owner through strict solicitor-client privileges. The lawyer is hired specifically to carry out banking and business transactions for the beneficial owners:

> Nigel Bowe, a lawyer in the Bahamas, served as a key contact for drug smugglers where he incorporated and administered the business of many corporations. In addition he maintained balances of as much as $30 million in a secret U.S. dollar account at a branch of a Bank of Nova Scotia for his clients. (Marsden, December 21, 1985, pp. A1 & A2).

Professionals and non-professionals will offer services which are tailored exclusively to serve the needs of criminal launderers. These laundering specialists offer a number of services linking foreign criminal organizations with tax haven countries including:

- providing legitimate services such as incorporating companies, establishing bank accounts, etc.;
- providing illegal services such as bribing bank officials, fabricating minutes of annual and other stockbroking meetings, falsifying documentation on purportedly legitimate business transactions that were actually laundering transactions (Karchmer, 1988, p. 33).
- providing courier services, which will physically transport cash to tax haven through charter or commercial flights (United States Senate, Committee on Governmental Affairs, Permanent Subcommittee on Investigations. Feb. 1988, p. 5.); and
- linking traffickers with launderers (Karchmer, 1988, p. 34).

Laundering methods within tax haven countries may range from simply depositing the funds in a secret bank account to a complex hierarchy of laundering schemes spanning several secret bank accounts, shell corporation and tax haven countries.

The diverse range of services available in tax haven countries are not mutually exclusive but rather are combined into complex schemes. For example, sophisticated launderers may use lawyers located in tax haven countries to incorporate holding companies which in turn own other companies who are the registered owners of secret bank accounts through which illicit money flows.

In many cases involving an international criminal enterprise, once the money leaves Canada, it will not return, but remains in safe havens. However, if there is a desire to have the funds in Canada, by using international markets and the protection of tax haven countries, the launderer creates an ideal front to repatriate the money into Canada.

C. Illicit Funds Entering Canada: Repatriation and Foreign Proceeds of Crime

Cases reveal that illicit funds enters Canada under two general categories: first, that which was previously transported out of the country and is repatriated to Canada, and secondly, proceeds of crime generated elsewhere in the world is exported to Canada for the purpose of laundering.

1. Repatriation

The third stage in the laundering process involving Canadian criminal organizations is the repatriation of the funds to this country. This is done in order that the fruits of the organization's business can be realized.

The means and vehicles through which money is repatriated into Canada are very similar to those through which it is exported, including monetary instruments, precious metals or gems, use of courier services, wire transfers through financial institutions and travel agencies.

If the funds are physically smuggled into Canada, U.S. currency is often used and the smuggling is performed by non-Canadian based criminal enterprises. More often, the funds entering Canada will do so under the guise of capital derived from legitimate sources and as a part of a commonplace business transaction.

To accomplish this pretence of legitimacy, funds will flow from the secret bank accounts of offshore companies in order that the beneficial ownership and true source of the funds is not revealed. The guise under which illicit monies will be repatriated are multifarious but can be classified under three general headings: investment, loans, and payment for merchandise or services rendered. Variations of these routes are listed below.

i. Loan-Back Technique

In the loan-back technique, the criminal enterprise maintains companies in both Canada and a financial haven. Money is "borrowed" from an offshore secret account of the foreign corporation to the Canadian company. In effect, the money launderer is borrowing his/her own money and, more importantly, returning it to Canada. Further, according to the Enterprise Crime Study Report, this laundering scheme usually involves several offshore corporations:

> Money in a Swiss bank may go to the criminal's Liechtenstein corporation, which transfers the money to his Bahamian corporation, which makes the money available to a Canadian lawyer, who makes the funds available to the criminal in Canada. His Bahamian offshore corporation may be a trust, loan or insurance company, making the transaction look legitimate (Canada, Department of Justice, 1983, p. 50).

ii. Direct Investment

Instead of using a loan back method, illicit funds can be repatriated into Canada simply through the guise of foreign investment into a new or existing company:

> The lawyer and principal launderer for a Canadian drug trafficking organization incorporated a shell company called Pitroyal Inc. in the Jersey Islands which would invest in a number of companies in Canada. These investments would be funnelled through a Canadian holding company which was registered with Canadian regulatory authorities as a subsidiary of PitRoyal (Canada, RCMP case files).

iii. Immigrant "Investment"

Illicit money can be brought into Canada under the guise of funds accompanying an individual qualifying for landed immigrant status. This scheme is effective because, despite the mandate of Immigration Canada to ensure that funds entering the country on a visitor's or immigrant's person is legitimate, there are few resources available to verify the true source of the funds being brought into this country by immigrants.

As the following case demonstrates, this laundering method has been used to repatriate illicit money to Canada:

> A landed immigrant residing in Halifax wire transfers the proceeds of a local drug trafficking business, usually $10,000 at a time, to a bank in Paris. The money is then transferred to a bank in Lebanon. If he does not wire transfer the money, he takes it personally to Lebanon. After a period of time a relative arrives in Canada as a landed immigrant and at that time the money is given back to the trafficker as a gift. Thus, the true source of the illicit funds is concealed while creating a seemingly legitimate source: cash gifts (Canada, RCMP case studies).

It is unclear in this specific case whether the relative used the illicit funds to qualify for business immigration status to Canada. Such a scheme would be feasible.

iv. Purchasing a Company Already Owned by the Criminal Enterprise

By transferring funds to a secret account in a foreign tax haven, the criminal can "buy" his/her own business already in existence in Canada. By making this purchase the launderer successfully returns a large sum of money to Canada while still retaining title through a secret trust of the business.

In many cases the business purchased will be at an artificially inflated price. The difference between the artificial price and the real or actual price is deposited in the bank account of a foreign subsidiary company in one of the tax haven countries. A reverse situation involves the Canadian company being sold at an artificially low price (Canada, Department of Justice, 1984, p. 51).

v. Double Invoicing

An offshore corporation incorporated by the criminal enterprise orders goods from its foreign subsidiary in Canada. The transaction is completed and payment is sent in full to the bank account of the Canadian subsidiary. Both companies, in fact are owned by the criminal enterprise and the "payment" for goods is actually a repatriation of illicit funds previously spirited out of the country.

Depending upon the specific scheme, double invoicing may require the foreign company and its Canadian subsidiary to have conflicting records. However, since the records, to the extent that they are kept, are in different jurisdictions a comparison is never made (Clements, "Money Laundering; A Canadian Perspective." n.d., p. 10). A variation of this scheme involves simply invoicing non-existent property or merchandise. While the risks may be higher if an investigation is undertaken, until then, the completely fraudulent invoicing scheme may be the easiest.

2. Foreign Illicit Proceeds Entering Canada

Police cases and law enforcement intelligence information reveals that in addition to repatriation, illicit funds generated elsewhere in the world are entering Canada for laundering purposes.

Overwhelmingly, the origin of this money is the United States. The mediums through which the money is brought into Canada will be identical to those in which repatriation is accomplished. However, cases also indicate that American currency will also be smuggled into Canada. Launderers will attempt to take advantage of the liberal border restrictions between the two countries by smuggling illicit money through by car.

> In November 1985, Canada Customs detected $800,100 in U.S. currency hidden in a spare tire in the trunk of a rental vehicle attempting to enter Canada through a border crossing at Surrey, British Columbia. The cash, which was discovered by an astute Customs agent who noticed the spare tire did not fit the car, was destined for deposit into a Canadian Chartered bank. Further investigation revealed that the two Mexican males were connected with a Mexican money laundering operation and that other members were waiting in Blaine, Washington with an additional $1,345,100 (US) destined for a Canadian bank (Canada, RCMP case files).

As the following two cases demonstrate, American criminals will also take steps to convert illicit American cash into alternative forms prior to smuggling it into Canada.

> A U.S. drug trafficker smuggled almost $1 million in U.S. funds into Canada. Much of this money was converted into United States bank drafts (Canada, RCMP case files).
>
> A launderer for a U.S. drug trafficking organization would personally, or through his couriers, convert illicit American cash into Canadian currency. The cash would then be smuggled into Canada. This involved over $200,000 in Canadian currency (Canada, RCMP case files).

Illicit funds are also physically smuggled via the airlines by means of body packs or suitcases.

> In 1986, an American drug trafficker showed up at the Bank of British Columbia with over $800,000 (US). Records indicate that three days prior Rios had flown into Vancouver aboard Frontier Airlines from Spokane, Washington (Canada, RCMP case files).

Two recent police cases demonstrate that illicit funds are still entering Canada.

> In January 1989, A Canada Customs officer located on the Pacific Border Crossing discovered more than $1 million (US) in cash hidden in a car driven by a married American couple (Hall, October 11, 1989, p. 1).
>
> On May 11, 1989, the Supreme Court of Ontario froze $13.5 million (US) in an account of a branch of the Swiss Bank of Canada. Drug Enforcement Administration officials in the U.S. allege that a Panamanian Bank arranged through its parent company - Banco de Occidente of Columbia - the wire transfer of the money from the United States into a Toronto account of the Swiss Bank Corporation (Canada). The DEA claims that "the money is part of the proceeds of a $1.2 billion Columbian cocaine- and marijuana-trafficking operation" (Bindman, May 11, 1989, p. 1).

Cases also indicate that Canada is also being used as a transit point between the United States and tax haven countries:

> A money launderer, posing as a lawyer from San Francisco, was apprehended at the Vancouver International Airport attempting to board an Air Canada flight to Switzerland with $200,000 (US) in his luggage. He had brought the cash to Canada from California by car and was transporting it overseas on behalf of a suspected cocaine trafficker in the United States. In this case, the criminal launderer apparently felt more comfortable exiting the continental United States to the desired financial haven via Canada rather than directly flying there from a U.S. city (Canada, RCMP case files).

There are a diverse number of reasons why criminal enterprises based internationally would launder their proceeds through Canada. Canada represents a politically and economically stable country whose geographical proximately is buttressed by a long, relatively open border, making it especially attractive to American criminal organizations. Unlike in the United States, no formal declarations need to be made to Canadian authorities when crossing the border with cash.

Canada's free enterprise system with ample opportunities for investment provides an alternative to the United States. The continual economic integration of the two countries ensures that business and financial transactions between two trading partners attract little suspicion. Finally, Canadian banking institutions maintain an international reputation for certain qualities which are highly sought out by launderers.

III. GLOBALIZATION OF BUSINESS

International money laundering must be placed in the context of the profound structural changes which have taken place within the international economic market since World War Two. Laundering operations take advantage of opportunities that accompany the integration of free market economies (Taylor, 1989, p. 55).

The economic integration of major Western countries is evidenced by the increasing proportion of national income derived from international trade as well as the proliferation of multinational corporations (Fielke, 1988, p. 195). This broad trend results from a number of reasons, including: a saturation of industrial markets, the rise of newly industrialized countries, and improvements in global transportation and communication networks (Piore and Sabel, 1984, pp. 12-15).

This drive towards the globalization of economic activity has been accompanied by significant changes in the attitudes and structures of Western governments. These governments have reduced their direct intervention in, and the regulation of, their economies. National governments have also relaxed many tariff restrictions to facilitate international trade and commerce. This latter action prompted the rise of free trade associations such as the European Economic Community and, more recently, the Free Trade Agreement between Canada and the United States.

The current widespread shift towards international trade has been accompanied by the rise of an international, financial service infrastructure to facilitate the transborder flow of commerce (Gart, 1989, pp. 107-138). It is the use of this new financial infrastructure by criminal enterprises that facilitates international money laundering. Indeed, police cases indicate that the flow of illicit capital internationally occurs, easily and efficiently, through both traditional and newly established legitimate systems of international commercial and financial infrastructures.

Canada is explicitly a part of this global economic integration. In the past decade, Canada exported 25 to 30 percent of its Gross National Product. In 1988 Canada's foreign trade was 56% of its Gross Domestic Product (GDP) as compared to the U.S. where foreign trade was only 16% of its GDP (Organization for Economic Cooperation and Development, January 1990, pp. 24, 92, 96). Large numbers of Canadian industries are controlled by foreign multinationals and a sizable amount of Canadian wealth is held abroad - much of it in the form of direct investment in other countries (Harris, 1985, p.1).

Canada's participation in this global economy is reflected in five recent developments which are both indications of and catalysts in this international economic evolution: the Canada-U.S. Free Trade Agreement, the internationalization of the Canadian banking and securities industries, the establishment of Vancouver as an International Financial Business District and business immigration investment.

A. Free Trade Agreement

The stated objective of the dismantling of the few barriers remaining between the world's largest trading partnership through the Canada - United States Free Trade Agreement (FTA) was the eventual repeal of the majority of tariffs on the transborder movement of commodities, services and financial capital (Canada, Department of External Affairs 1987).

These changes translate into an easier movement of illicit capital disguised as legitimate business and/or financial transactions (in particular, the payment of goods and services) between the two countries.

Taylor argues that the FTA could reduce the role of Canada Customs, a regulatory body which stands at the forefront of combatting the movement of illicit capital physically smuggled into Canada, by reducing the range of Custom's interventions in the area of what is called "technical barriers" to trade (Taylor, 1989, p. 47).

The FTA urges that the products produced by business in both countries should, henceforth, be expected to meet general performance standards. The effect of this provision may be to eliminate the need for scrutiny by Customs and Excise to ensure the imported good's compatibility with nationally defined or "nation specific" codes (Article 603).

Customs and Excise officials firmly deny that the FTA would lead to a reduction in their role. Officials point to the increased need for Customs to make interventions, under the provisions of the free trade deal, in order to ensure that "third parties" do not take advantage of the tariff reductions operating within the Free Trade area (McKinnon, 1989).

However, on March 8, 1990, National Revenue Minister Otto Jelinek unveiled a plan to "streamline" customs procedures at the borders. This emphasis on moving commerce across the border with little inconvenience to business will make the task of monitoring the flow increasingly difficult or impossible. Customs reported that there were 100 million border crossings in 1989 and that courier and postal volumes are expected to continue a high rate of growth. The prediction is that:

> "The day is coming when a truck carrying commercial goods into Canada will be able to breeze through Customs without stopping and proceed directly to its Canadian destination (Rusk, March 8, 1990, B5).

The article was concerned with tax evaders and stressed tougher enforcement of rules and penalties; no mention was made of drug smuggling or money laundering and the stiffer penalties and rules which have yet to be determined.

While it is too early to determine the impact of the FTA, it may be correct to assume that if there is a reduction in the number of "moments of intervention" either by Customs officials or any other regulatory or enforcement officials involved in the movement of goods, the result may be the creation of new or enhanced opportunities for the illicit movement of capital into and out of Canada (Taylor, 1989, p. 48).

For example, the FTA decreases government scrutiny of American foreign investment in Canada. The FTA amended the Investment Canada Act by progressively raising the limit which determines when a review of a direct acquisition of a Canadian company will be conducted. As of January 1990, no reviews were conducted for acquisitions under $50 million (CDN). This will be raised to $100 million in 1991 and $150 million by 1992 (Canada, Investment Canada 1989, p. 3).

Police cases reveal that illicit money coming into Canada does so under the guise of legitimate investment. Thus, criminal enterprises or nominees posing as legitimate American investors will have easy access to Canadian markets with their "investments" as long as they keep those investments below the prescribed amount.

B. Internationalization of Canadian Banking Industry

The regulatory changes in the FTA as well as revisions to the Bank Act have opened up the Canadian banking industry to foreign competition.

Under the FTA, U.S. banks can expand their operations in Canada because they will be exempt from Canada's 16 percent ceiling on the foreign bank share of total domestic banking assets. Like Canadian banks, the U.S. banks will also be able to acquire securities firms and trust companies (Canada, Department of Finance, Chapter 17, Article 1703).

The 1980 revision of the Bank Act has also opened the Canadian banking industry to foreign competition, by allowing for the first time wholly-owned subsidiaries of foreign banks in this country (Canada, Banks and Banking Law Revision Act, 1980, S.C. 1980-81-82-83, c. 40, ss. 2[1] and 302).

The implications of foreign competition in the Canadian banking industry are manifold. Police cases demonstrate that Canadian subsidiaries of foreign banks have been used to bring in illicit money from their mother country. For example:

> In early 1989, a Toronto branch of the Swiss Bank Corporation (Canada), a foreign subsidiary of Switzerland's second largest bank, received over $13 million (US) in illicit money through electronic wire transfers from a Panamanian Bank, itself a subsidiary of a Columbian bank (Malarek, 1989, p. 3).

This case indicates the ease with which illicit money can be electronically transferred internationally through correspondent banks. More significantly, the movement of illicit money through electronic wire transfers is made easier if performed through just one bank with branches located internationally.

By minimizing the number of institutions used in the laundering process the opportunity for scrutiny by banking and regulatory officials is decreased. In addition, the ability of a corrupt banking official in one branch to manipulate transactions and/or officials in another branch of the same bank heightens the ability to more effectively facilitate the international laundering process.

The loosening of regulatory restrictions for the operation of foreign-owned subsidiary banks in Canada also creates the potential for the incorporation and operation of subsidiaries by criminal enterprises themselves. The use of nominee incorporators, shareholders and directors, as well as a parent corporation located in a tax haven country allows the criminal enterprise to circumvent regulatory scrutiny.

While there have been no police cases to date of criminal ownership of foreign subsidiaries of banking institutions in Canada, both the Superintendent of Financial Institutions and the RCMP have investigated institutions operating illegally as banking subsidiaries (Mitchell, 1989 and Canada, RCMP case files).

Finally, the FTA has allowed Canadian banks greater access to the American market by permitting them to operate on par with American banks (Canada, Department of Finance, Chapter 17, Article 1702). This change can potentially allow easier access to Canada for illicit money generated abroad through international inter-branch transfers.

C. International Financial Business Centres

Recently enacted legislation in British Columbia is of particular interest in the examination of the entry and re-entry of illicit funds to Canada. The International Financial Business (IFB) Act (Bill 23, 2nd Sess., 34th Leg. 1988) and the International Financial Business (Tax Refund) Act (Bill 22, 2nd Sess., 34th Leg. 1988) establishes the City of Vancouver as an international financial business centre, that is, a specially designated district which provides incentives to banks and other financial institutions to conduct business with non-residents (Rosenburg, 1982, p. 284).

The IFB Act allows new, wholly-owned subsidiaries of financial institutions to apply for a licence to carry on an international financial business in Vancouver.

Institutions eligible for registration under this Act include banks, trust companies, foreign exchange houses, insurance companies, and investment dealers, managers and advisors (British Columbia, International Financial Business Act, 1988, s.1[1]).

As stated in the Government of British Columbia's promotional literature, the licensed subsidiary will be regulated under the IFB Act rather "than the more exacting regulatory legislation governing the parent financial institution" (British Columbia, Ministry of Finance and Corporate Relations, n.d., unpaginated). Alan Clark, Head of Investigations for British Columbia's Office of the Superintendent of Financial Institutions sees this combination of increased foreign investment with decreased regulation as a threat to counteracting international money laundering operations in British Columbia.

In particular, this legislation permits the Provincial Office of the Superintendent of Financial Institutions to conduct an investigation of a licensed subsidiary, but, unlike other financial institutions, there are no routine compliance examinations. Thus, there are few proactive means to discover illicit money.

The establishment of a business under the auspices of this legislation could give the sophisticated launderer an effective base from which to import and/or repatriate illicit money. This is especially likely as the types of companies registering as international financial businesses are those most conducive to money laundering--banks, trust companies, investment dealers and currency exchange houses.

The nature of these businesses means that connections with tax haven countries would be commonplace. Criminal enterprises can take advantage of this relationship by, for example, registering ownership of the business in the name of an offshore corporation located in a tax haven country, and/or laundering illicit funds through two Canadian companies under the guise of legitimate financial business transactions.

Thus, the IFB Act provides the international money launderer a further opportunity to invest illicit money in Canada while maintaining the featureless and commonplace requisite essential to the success of a international laundering operation.

D. Business Immigrant Investment

Since 1979 the Federal Government's "Business Immigration Program" has facilitated the immigration of applicants who wish to establish businesses in Canada. The program was created to attract those individuals who have both the money and the abilities needed to create work and wealth in this country (Canada, Employment and Immigration 1989).

Individuals may immigrate to Canada under this program through one of three categories: entrepreneur, investor, or self-employed (Canada, Employment and Immigration, 1988, p.1).

In the past three years, the number of people immigrating through this program has increased dramatically. This increase can be explained by a large jump in those applying under the investor category: an increase of zero in 1985 to 246 in 1988. The first six months of 1989 alone saw 268 applicants in this category. Of the 1989 total, 107 individuals (or 40 %) were from Hong Kong (Bokhaut, 1989).

Canadian law enforcement officials are concerned that illicit money flowing from Hong Kong may enter Canada disguised as legitimate investment carried by newly-arrived immigrants and that incentive programs, such as the Business Immigration Program, creates further such opportunities.

In 1997, sovereignty of Hong Kong reverts to the People's Republic of China, ending more than 150 years of British rule. Faced with the prospects of the elimination of the capitalist system, Chinese criminal organizations, such as triad organizations[13], may attempt to export their assets and infrastructures from Hong Kong, strengthening an already firmly established presence in Canada (Bresler, 1980).

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[13] Triads developed in China in the 17th century as secret societies, whose members, bound by oaths of blood brotherhood, were dedicated to overthrowing the Ching dynasty. During the second half of the 19th century, many Triad members fled to Hong Kong, Indochina and North America after an unsuccessful rebellion. Over the same period, the political goals of Triads became increasingly subordinate to their criminal ambitions (Morgan, p. 3). The existence of many Triad groups is based upon control of the thriving Asian Narcotics Trade (Bequai, p. 18).

E. Internationaliazation of the Canadian Securities Market

Canada's securities market is part of the movement towards an integrated global securities market. Shares of more than 500 major corporations are traded on at least one exchange other than a home country exchange (Thomas, 1983, p. 20). The number of transnational securities transactions has greatly increased, and stock exchanges are establishing trading links with markets in other countries. For example, Canada and the United States have established electronic trading linkages - one between the American Stock Exchange and the Toronto Stock Exchange and another between the Boston Stock Exchange and the Montreal Exchange.

The deregulation of the Canadian securities markets will eventually allow foreign firms to own 100 percent of a Canadian investment firm (Melnbardis, 1988, p. 12). Experts predict that the establishment of an integrated worldwide capital market system is only a few years away (Kauffman, 1985, p. 810). Consequently, each country's domestic securities markets and players will increasingly become affected by conduct initiated outside its borders.

This internationalization also holds true for the use of securities markets as laundering vehicles. The international character of brokerage firms can facilitate the transfer of illicit money worldwide.

The Enterprise Crime Study Report documents one money laundering scheme which utilizes brokerage firms to transfer large quantities of cash internationally:

> "a foreign bank that unknowingly represents a criminal. . . places an order with a Canadian broker for a large sum in securities. The bank advises the broker that

> the funds will be paid directly in Canada through a courier. The criminal then engages a courier who delivers the funds, in whatever form, and the securities are then sent to the foreign bank, where they are later recovered by the criminal" (Canada, Department of Justice 1983, pp. 48-49).

This case also highlights the continual blurring of the barriers with the financial services industry. Banking institutions, both domestically and, more significantly, internationally, can own brokerage firms and participate in the Canadian securities market for beneficial owners without maintaining a branch in Canada (Robinson, 1987, p. B7). This poses significant problems for law enforcement when the bank is located in a tax haven country. Swiss banks, for example, may act as stockbrokers, underwriters and mutual fund managers ("Banking Secrecy" 1983, pp. 605 and 611).

F. Conclusions: Globalization of Business

Standing alone, each of the above-mentioned economic developments will not cause the proliferation of money laundering in Canada. However, their significance lies in their combined contribution to the continual globalization of business. These trends are antithetical to the efforts of law enforcement and society in general to combat money laundering.

The liberalization of trade restrictions, and limits to government regulation will make money laundering much easier by eliminating barriers, while making the transactions seem much more commonplace. The "moments of intervention" whereby regulatory and enforcement officials traditionally had an opportunity or an responsibility to monitor transborder flow of goods or services are being reduced. In turn, this will make detecting these illicit transactions much more difficult.

IV. COMBATTING MONEY LAUNDERING IN THE INTERNATIONAL FORUM

A. Federal Regulatory Bodies

In addition to law enforcement agencies, there are three federal regulatory bodies directly implicated in combatting international money laundering operations with Canadian connections: Customs Canada, Immigration Canada and Investment Canada. At present, while limited powers are available to these regulatory bodies to combat money laundering, they lack the mandate to do so.

1. Customs Canada

As the Canadian body with law enforcement powers and exclusive jurisdiction over points of entry into Canada, Customs potentially can play a pivotal role in combatting the physical transport of illicit capital across Canadian borders. At present, however, Customs Canada lacks the mandate to monitor the flow of cash, illicit or otherwise, across the Canadian border.

Unlike the United States, there is no law stating that cash must be declared when entering or leaving Canada. Thus, in the absence of any transborder currency reporting system, Customs Canada has little legal recourse if cash is found upon a person or vehicle entering or leaving this country.

While the Customs Act gives Customs officers extensive powers of search and seizure, the procedures are strictly controlled (Canada, Customs Act, R.S.C. 1985 [2nd Supp.] c. 1.). A Customs officer must have "reasonable grounds" to believe that the Act has been contravened before the questioning of a traveller is upgraded to a more detailed search (Canada, Customs Act, R.S.C. 1985 [2nd Supp.] c. 1. s.98[1], 110[3]). Since currency reporting is not required by law, a Customs officer cannot use the discovery of cash as "reasonable grounds" for search and seizure.

Even if cash is discovered under suspicious circumstances, other law enforcement agencies, such as the RCMP or local police, would not necessarily be contacted, as no law would be broken at the border crossing. Other law enforcement agencies will be contacted only if intelligence available to Customs Canada indicates that an individual is a fugitive from justice or has a past criminal record. In some situations the individual is turned back to the United States where the money will be seized by the U.S. Customs officers if the required Currency or Monetary Instruments Report (CMIR) was not submitted before exiting from the country.

Cases indicate that launderers also attempt to transport expensive luxury goods, such as precious gems, purchased with illicit money across the border. If these items are smuggled across the border, Customs officials have recourse to seize them and possibly arrest the individual. Sophisticated launderers, however, will declare these items at the border and pay the applicable tax.

Intelligence information supplied to all Customs officers by national and international agencies is comprehensive.

However, because Customs Canada has a limited mandate to deal with transborder movement of illicit cash or goods, there is little emphasis placed on money laundering intelligence gathering.

In the event that their mandate is broadened, Customs officials claim to have created a system to quickly distribute and share information concerning money laundering to Custom officers (Becker, 1989). This capacity to collect and share laundering intelligence plus amendments made to legislation administered by Customs Canada, would assist them to address the problem of money laundering via currency "smuggling" at Canada's borders.

2. Immigration Canada

Canada's Immigration officials are potentially important participants in combatting the entrance or repatriation of illicit funds into Canada. Immigration checks are performed on a selective basis at all border crossings, seaports and airports.

Those entering Canada to work, study, visit for more than six months, or as new immigrants, are referred to an Immigration officer. The strength of this government agency lies in its power to refuse admission of individuals under certain circumstances, for example, if they possess a criminal record (Canada, Immigration Act, R.S.C. 1985, c. I-2, s. 2[a]).

Unlike Customs Canada, Immigration officers have the power to ask potential immigrants or visitors how much money they are bringing into Canada. It is the Immigration officer's responsibility to ensure that immigrants or visitors bring in sufficient money so that they will not be a burden on Canadian social systems. Because the focus has been on protecting Canada from visitors who might be an economic burden on this country, it is rare for the source of an immigrant or visitor's money to be scrutinized by Immigration officials. Visitors need only make a verbal declaration of their assets.

Immigration Canada, however, is given powers to evaluate the source of an immigrant's money for investment in Canada. Thus, Immigration officers can be involved in circumstances where illicit funds enter the country under the guise of investment capital. As the Immigration Manual states, Immigration officials must ensure that the source of the funds invested and assets of prospective immigrants are legitimate.

> "When selecting business immigrants, the visa officer will be concerned mainly with the applicant's proven track record, financial resources, and intent to invest in a participate activity in business activities which contribute to economic development and create jobs for Canadians. **Care will also be taken in ensuring that the source of available funds is legitimate**" (Canada, Department of Employment and Immigration, Immigration Manual, Section 5.15[1], emphasis added).

Despite these powers, the question of an immigrant's source of funds is addressed in vague terms, and there are no mechanisms for identifying what are and are not legitimate funds or for verifying net worth statements.

While Immigration officers are empowered to see the money, they possess limited powers of search and seizure. Immigration officers have the power to ask individuals to produce documents, money or assets which can be subsequently seized, but they do not have the power to initiate a search. Seizures can only be performed if an Immigration officer is shown or inadvertently discovers documents and assets which are deemed to warrant being seized (Hurteau, 1989).

Immigration officials have restricted direct access to valuable intelligence data, such as criminal record information. They must rely upon formal requests to the RCMP or Customs Canada for this type of information. Once an individual is denied access, the person is "logged" in an internal immigration information system, called Field Operational Support System (FOSS), which identifies individuals who have been denied entry to Canada in the past.

Many of the restrictions on the operations of immigration officials have to do with resource limitations. A thorough investigation is required not only here in Canada and in the country of origin of the immigrant, but also as a follow-up to determine that in fact the money has been invested and is not part of a laundering or fraud scheme.

3. Investment Canada

Illicit money entering Canada will often do so under the guise of legitimate investment. The regulation of foreign investment coming into this country is the responsibility of the federal government through Investment Canada.

Investment Canada is a regulatory agency created by The Investment Canada Act (S.C. 1985, c. 20). The responsibilities of this agency are to both encourage and regulate foreign investment in Canada. The legislation provides Investment Canada with a mandate to:

> "encourage and facilitate investment. At the same time it provides for a review of large acquisitions in Canada by non-Canadians to ensure that they are likely to be of benefit to Canada" (Canada, Investment Canada, n.d., p. 1).

The regulatory aspect centers on its responsibilities to review foreign investment over a specified amount. Investments requiring review include all direct acquisitions of Canadian businesses with assets of $5 million or more, and indirect acquisitions of Canadian businesses with assets between $5 million and $50 million which represent more than 50 percent of the value of the total international transaction (Canada, The Investment Canada Act. S.C. 1985. c. 20, s. 14-25).

Any acquisition of a business under the specified amounts will not be reviewed, and the investor need only notify the agency of its intent to invest. In addition, investments which establish a "new business" in areas outside of strategic and cultural industries need only submit a two-page notification form. This form asks for details about the investor, such as name, mailing address, telephone number, whether the investor is an American, name and address of the "person who controls the investor" and country of origin of the investor. The second part solicits information concerning the intent of the investment, such as the name of the business, address and value of assets.

Any foreign investment which is a direct or indirect acquisition of a business that exceeds the specified ceiling is reviewed by the agency. This process is initiated by the investor who submits an application for review. The application requests similar but slightly more detailed information than the notification form. The application is reviewed based only upon its "net benefit to Canada" (Canada, Investment Canada, n.d., p. 8).

There is a general lack of regulatory scrutiny by Investment Canada to identify proceeds of crime entering Canada under the guise of foreign investment. In neither the notification or application process are questions asked about the source of the invested funds. Applicants are asked to supply only basic information, and no background check is performed to verify the accuracy of the information. Further, law enforcement, either nationally or internationally, are not asked to perform checks on the applicants.

After the investment, little follow-up information is required. Under the Act, investors need only file a brief statement about the investment. In addition, regulations allow applications concerning indirect acquisition to be delayed for 30 days following the actual investment (Canada, Investment Canada, n.d., p. 8). Thus, a criminal enterprise is allowed to liquidate an investment before the regulatory authorities are ever notified.

This level of regulation allows a criminal enterprise to easily invest in Canada under the guise of a foreign investment. When laundering illicit money under the guise of a foreign investment, a criminal enterprise can:

- incorporate a new business in Canada as a subsidiary of a shell company located in a tax haven country;
- ensure the business is not in an industry in which extra scrutiny is applied (such as energy or culture);
- "notify" Investment Canada of the investment.

- incorporate a new business in Canada as a subsidiary of a shell company located in a tax haven country;
- ensure the business is not in an industry in which extra scrutiny is applied (such as energy or culture); and
- "notify" Investment Canada of the investment.

Because information solicited on the "application for notification" is minimal and rarely verified, the use of nominees by a criminal launderer is not even necessary. Once the application process is completed, Investment Canada grants its approval, thereby contributing to the legitimization of the illicit money invested.

The superficial scrutiny of foreign investment arises from not only the absence of a mandate to ensure that incoming investment comes from legitimate sources, but an explicit desire to promote foreign investment in Canada. Thus, an environment has been created for foreign investors which is devoid of what the government considers excessive regulation. The promotional literature, in fact, states that it is not the place of the government to intervene with any investment once it has passed the notification or review stage (Canada, Investment Canada, n.d., p. 7).

This philosophy underlying Investment Canada, has prompted critics to charge that the emphasis is exclusively on attracting investment, while its role as a regulator of foreign investment has been ignored (McIntosh, Globe and Mail 1989, p. B4). In addition to facilitating foreign investment, there is increasing concern that this organization has a role as a potential facilitator of laundering schemes. As more investment capital flows over the borders, these assets become protected by the size of the task of determining their origins.

B. Canadian Legal Instruments and International Money Laundering

Canada has long recognized that policies directed at taking the profit out of crime through confiscating proceeds and preventing money laundering must have an international dimension. Consequently, legislation has been passed and programs have been developed to complement our internally directed legislation and programs. This embraces four main activities:

- the mutual legal assistance initiative with its implementing legislation;
- key features of the proceeds of crime legislation;
- the role played by Canada in the development of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; and
- negotiating memoranda of understanding.

1. Mutual Legal Assistance

Treaties providing for international cooperation in the investigation and prosecution of crime until recently were for the most part restricted to extradition. When crime was local or confined within the borders of a country this was adequate. But as the world has shrunk due to advances in transportation and communication, crime has expanded so that much of it transcends national boundaries. Extradition was no longer sufficient; countries started to provide for a wider range of cooperative measures through mutual assistance treaties. Though there are a number of good reasons for mutual legal assistance treaties, they probably could be justified solely on the basis of their relevance to crimes producing large profits.

Investigations for offences which may result in confiscating proceeds of crime and of course, investigations relating to money laundering, will often lead from country to country. A deliberate aspect of many laundering schemes is the crossing of jurisdictions or national borders. It is important that these countries are able to provide assistance or to permit officials from other countries to carry out investigations within their borders.

For a variety of reasons, mainly relating to sovereignty, most countries would prefer the former rather than the latter. In any event, the need for international cooperation is generally recognized and has led many countries to develop a network of mutual assistance treaties.

Canada started its programme to negotiate bilateral mutual legal assistance treaties in 1983. The first one was with the United States and was signed in March 1985. It came into force on January 24, 1990. Treaties have been negotiated and signed with the United Kingdom (June 1988), Australia (June 1989, in force March 14, 1990), France (December 1989), the Bahamas (March 1990), and Mexico (March 1990).

Though not yet signed, treaties have been negotiated with West Germany, Switzerland, and the Netherlands. Negotiations are well advanced with the Cayman Islands and Italy.

Canadian "implementing legislation," the Mutual Legal Assistance in Criminal Matters Act, was passed in 1988 (S.C. 1988, c. 37). This legislation provides the necessary legal authority and sets out the procedural requirements for executing requests made by a treaty partner. It also provides a mechanism for considering requests from countries with which there is no treaty.

If the relevant treaty provides for it, the legislation authorizes the Minister of Justice to permit a foreign state to enforce in Canada the payment of a fine imposed in the foreign state. This is significant to the proceeds of crime/money laundering problem as the legislation defines "fine" to include:

> "... any pecuniary penalty determined by a court of criminal jurisdiction to represent the value of any property, benefit or advantage, irrespective of its location, obtained or derived directly or indirectly as a result of the commission of an offence" (S.C. 1988, c. 37, ss. 9[3]).

Thus, proceeds of criminal activities, which have been laundered can be used as the basis for a fine that can be executed against property in Canada. It must be noted, however, that this provision has not yet been used. Consequently, it may be some time before its effectiveness can be assessed.

The mutual legal assistance treaty itself provides for a set of reciprocal obligations and benefits along with provisions respecting the making, consideration, and execution of requests. The obligations are to conduct investigative procedures on behalf of enforcement and prosecutorial authorities of the requesting state on the same terms as these procedures would be available in investigations in the requested state. The kinds of assistance generally provided for include:

- executing searches and seizures;
- taking evidence from witnesses;
- gathering and transferring information and evidence;

and

- making persons available to participate in investigations and proceedings in the requesting state.

The specific treaty may also provide for the execution of a foreign pecuniary penalty order (including confiscation orders) and some treaties have provisions relating directly to proceeds of crime.

Article XVII of the Canada/USA Treaty[14] imposes obligations on each party to provide notification of proceeds believed to be located in the territory of the other and to:

> "assist each other ... in proceedings related to the forfeiture of the proceeds of crime...."

The treaties with the United Kingdom (Article II [3][g]), Australia (Article II[2][g]), Mexico (Article VI) and with Bahamas all provide for assistance in relation to proceeds of crime.

2. Proceeds of Crime Legislation

Also of significance to international cooperation as regards money laundering and confiscation of criminally derived assets is the proceeds of crime legislation (S.C. 1988, c. 51) which amended the Canadian Criminal Code and the drug control statutes which entered into force in January 1989.

This legislation established money laundering as a specific offence and further refined the key concept of Canada's approach to the proceeds of crime problem--that of criminalizing the possession in Canada of any property or proceeds of any property which was obtained or derived directly or indirectly by criminal activities carried out inside or outside of Canada. This property is subject to forfeiture upon conviction for the substantive offence generating the proceeds.

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[14] Within 60 days of their entry into force, the treaties will be published in the Canada Gazette. For instance, the Canada-USA Treaty was published in the Canada Gazette, Part 1. pages 954-959, March 17, 1990.

There is a provision to make it clear that anyone is justified in providing information to authorities with respect to property and activities reasonably suspected to be related to criminal activities. This was meant to relieve banks and others of concerns relating to their duty of confidentiality to clients where reasonably grounded suspicions of illegality exist.

There are also mechanisms to secure and preserve (seize and freeze) suspected property pending prosecution and subsequent forfeiture. For drug related offences, there is a scheme to access otherwise confidential income tax information in limited circumstances.

3. United Nations Convention

In the early 1980s the international law enforcement community responsible for drug control recognized the need for a concerted cooperative effort directed at the profits of organized crime. Organized crime was then, as it is now, heavily engaged in the illicit drug trade. Through the United Nations Commission on Narcotic Drugs, a call was made for the development of a multilateral convention to foster international cooperation in connection with proceeds of crime stemming from the illicit drug trade.

This led to the adoption of the 1988 United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.[15] Though ultimately the Convention went much beyond measures directed at proceeds of crime, several of the main articles were directed at this problem.

More important for Canada was the fact that these key articles are compatible with our parallel domestic developments. This was no accident. Canadian officials were involved in the process right from its inception. In 1983 a special issue of the United Nations Bulletin on Narcotic Drugs was devoted to forfeiture of the proceeds of narcotic drugs. RCMP specialists stated in an article entitled: The Profits of Organized Crime: the Illicit Drug Trade in Canada that:

> "Canada is currently examining ways of improving the ability of law enforcement authorities to cause the freezing or seizure and subsequent forfeiture of all assets of value which are established to be the proceeds of criminal activity. The ability to recover the evidence of complex multijurisdictional laundering schemes is also an element of the study. The use of bilateral and multilateral law enforcement agreements and treaties may help to overcome major differences in legal systems and procedures" (Stamler and Fahlman, 1983, p. 69).

This study led to Canada's mutual assistance treaty initiative to the proceeds of crime amendments and to active involvement in promoting the UN Convention. Canada's approach to mutual assistance and proceeds of crime led to the positions the country advocated in respect to the corresponding articles in the UN Convention.

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[15] See, for instance, the "Report on the Meeting on Financial Assets and Transactions Related to Illicit Drug Trafficking," Vienna, 8-10 October, 1980, U.N. Document EICN. 71657 1 add. 2, 22 October 1980.

Among other requirements, the Convention requires parties to:

- make money laundering an offence (Article 3 1.[b]);
- provide for the confiscation of proceeds derived from drug offences;
- establish the necessary procedural tools; and
- cooperate with other parties in investigations requiring the identification, tracing, and securing of proceeds (Article 5).

The Convention also has a detailed article setting up a mini-treaty for Mutual Legal Assistance in relation to drug offences (Article 7). This treaty is consistent with Canada's preferred bilateral treaty model and in fact the definition of "treaty" in the Mutual Legal Assistance in Criminal Matters Act was developed in anticipation of the article on Mutual Assistance in the Convention.

Canada, with others, succeeded in having provisions designed to ensure that bank secrecy would not be an impediment to investigations adopted for both the Article on Confiscation and that on Mutual Legal Assistance. Parties are under an obligation to ensure that their courts or other competent authorities are empowered to order access to "bank, financial or commercial records" (Article 5 para 3). Parties are not to decline to act on the "ground of bank secrecy" (Articles 5 para 3 and 7 para 5).

While participating countries adopted this UN Convention in 1988, twenty countries had to ratify the Convention in order for it to come into force. A sufficient number of countries, including Canada, have now ratified the convention bringing it into force November 11, 1990.

4. Memoranda of Understanding

In addition to the legal instruments discussed above, a number of other "agreements" have been negotiated in order to facilitate cross-border enforcement and regulation. For example, regulatory bodies such as those within the securities industry and within industries which incorporate an international component, have needed to work together. In 1987, a statement of intent to sign a Memorandum of Understanding (MOU) between the American Securities and Exchange Commission and the Ontario, Quebec and B.C. Securities Commissions was agreed upon by all parties.

This MOU recognizes the regulatory problems inherent in the growing internationalization of the securities market. (Gherson, 1988, p. 2). The purpose of this MOU is to formalize an agreement to facilitate the investigation of international laundering operations involving the Canadian or American securities markets:

- regulators on both sides of the border will have the authority to pursue information and witnesses in their own country, on behalf of the other country, even though no violation of domestic laws has occurred; and
- regulators will be obliged to share information located in their jurisdiction, which is required by officials of the foreign jurisdiction.

C. International Initiatives To Combat Money Laundering

A diversity of international organizations and groups have participated in the discussion of transnational money laundering. Universal organizations such as Interpol, the Bank for International Settlements, and the Economic Summit meetings of the G-7 countries have all devised enforcement mechanisms against transnational money laundering. Regionally, groups such as the European Economic Community (EEC) and the Organization of American States, to which Canada has recently become a member, have also grappled with the problem.

1. Interpol

Interpol has increased its activities to counteract money laundering and to educate the public on the importance of its work. Its greatest contribution, however, is fostering cooperation in international criminal matters.

Interpol has provided technical assistance and training in combatting money laundering, especially in the Caribbean and Latin America. At the Eleventh American Regional Conference held in Panama City in 1986, a recommendation was made to establish police training seminars on conducting financial investigations as well as initiating money laundering legislation in the Caribbean and Latin America. These recommendations were the result of discussions held by the permanent Working Group on Identifying, Tracing and Seizure of Criminal Assets established by Interpol.

Interpol has successfully forged agreements on gathering and sharing information on international currency flows. At a April 1989 meeting in St. Cloud, France, a resolution was adopted which recommended that governments take action to record and report financial information connected with, or arising from, drug trafficking and other organized criminal activities and transmit such information to an Interpol database where the information can be shared with member countries. Interpol has also drafted model legislation to aid law enforcement in the conduct of international financial investigations and the forfeiture of criminal assets and has lobbied member and non-member countries to adopt such legislation.

2. The G-7 Economic Summit Financial Action Task Force on Money Laundering

At the June 20, 1988 meeting in Toronto, the leaders of the seven leading industrialized democracies (known as the G-7 Countries) pledged to establish a ministerial level task force on international narcotics trade as part of a broader effort to stop the production, trafficking and financing of illegal drugs. One of the priorities was to combat money laundering operations which used the international banking system. The declaration called for additional international cooperation to trace, freeze and confiscate the proceeds of crime. However, no reference was made to any specific measures to stop the recycling of drug profits.

According to press reports released at that time, governments were encouraged to expedite efforts to develop a "code of conduct" for banks that would increase pressure on institutions taking large deposits to establish that the depositors were engaged in legitimate activities (Burns, 1988, p. 1). The declaration also affirmed support for the U.N. Drug Convention and the 1988 Vienna negotiations.

On July 16, 1989 at the conclusion of the Summit Conference in Paris, the final communique expressed agreement to enhance international cooperation on four key topics--drugs, money laundering, terrorism, and the environment. The communique on money laundering called for the creation of a Financial Action Task Force on Money Laundering to be composed of representatives from summit participants and eight other industrial countries to assess the results of international cooperation already undertaken, to prevent the utilization of financial institutions for money laundering, and to consider additional preventive efforts in this area.

The establishment of such a task force was the first step towards formalizing international cooperation. The plenary group of the Financial Action Task Force on Money Laundering met with the French Minister of Finance on February 6, 1990, who approved the final report for transmission to governments. It will be made public during 1990.

This report contains 40 recommendations covering criminalization of money laundering, methods banks and other financial institutions should use to combat laundering, role of domestic regulators and supervisors in relation to financial institutions and methods of enhancing international assistance between administrative and law enforcement authorities.[16]

3. Bank for International Settlements (The Basle Committee on Banking Regulations and Supervisory Practices

Increasing attention is being placed on attempting to protect the banking system from being used for international money laundering. In December 1986, the Basle Committee on Banking Regulations and Supervisory Practices, which consists of the Central Bank Governors of the major industrialized countries,[17] requested U.S. representatives from the Federal Reserve, the Federal Deposit Insurance Corporation and the Comptroller of the Currency (The Cooke Committee) to draft a general statement of the principles that international bank supervisory authorities could encourage banks to follow.

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[16] Financial Action Task Force on Money Laundering Report released May 1990 by the Ministers of Finance for the participating countries.

In December 1988, a Statement of Principles titled "Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering" was adopted at the Bank for International Settlements. Canada is a signatory to this document which:

- encourages banks to verify the true identity of the beneficial owners of accounts and those using safe-custody facilities;
- suggests that banks adopt an explicit policy of refusing significant transactions with customers who fail to provide evidence of their identity;
- encourages banks to ensure full compliance with all applicable laws and regulations and, to the extent possible, to avoid transactions which they have reasons to suppose are associated with money laundering activities;
- encourages banks to cooperate fully with law enforcement authorities;
- provides that banks formally adopt policies to ensure compliance with the Code and to ensure that each member of their staff is informed of the banks' policies in this regard. Attention should be given to staff

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[17] The Committee comprises representatives of the central banks and supervisory authorities of the 12 leading industrialized countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, United Kingdom, United States and Luxembourg).

training in matters covered by the Code; and

- suggests that arrangements for internal audit may need to be extended in order to establish an effective means of testing for general compliance with the Code.

The Statement of Principles is not a legally binding document, however, most of the participating countries have set up guidelines for the banks to make the Principles precise and practical.

4. Regional

i. European Economic Community (EEC)

Money laundering has been discussed within the EEC in the context of combatting illicit narcotics trafficking as well as in discussions about European monetary union under the Single European Act. However, the measures taken thus far have consisted of statements of principles and proposals as opposed to binding laws and regulations.

On October 9, 1986, the European Parliament issued a report, urging the enactment at the community level of effective measures to deal with drug trafficking. The report calls for the establishment of a Task Force to coordinate an European-wide fight against illicit drug trafficking; (2) tighter customs control at the EEC's external frontiers; and (3) the establishment of a computer network within the EEC nations that currently do not have compatible networks. It appears that the scope of the Task Force and computer networks would include money laundering, drug trafficking and international terrorism.

In 1986, the European Council passed a resolution on Concerted Action to Tackle the Drug Problem. The Council undertook to (1) introduce effective measures to deal with the laundering of money coming from drug crimes, including issuing a EEC directive on currency transaction reporting; (2) amend existing customs regulations providing for the seizure of goods related to drug trafficking; and (3) ensure that each Member State has a central drug intelligence agency, and to facilitate exchanges of information among such drug agencies through an efficient computer information system. The Council asked the Commission to organize a European conference to study all the effects and implications of drug use in order to assess the activities of criminal organizations. Undoubtedly, the conference will include money laundering.

ii. The Organization of American States (OAS)

As a result of a conference on drug traffic in Rio de Janerio in 1986, the OAS established an autonomous entity known as the Inter-American Drug Abuse Commission (CICAD). While Canada did not join the OAS until 1989, the RCMP has been active as both an observer and direct participant in CICAD.

In 1986, members of the RCMP Drug Enforcement Directorate attended the founding sessions of CICAD as an observer. It has since been involved in educating other member-countries of the OAS on Canada's proceeds of Crime legislation (including translating this legislation into Spanish). In addition, in July 1989 the RCMP in conjunction with CICAD and the Canadian Police College co-sponsored an inter-Americans drug workshop attended by police officers from all member-countries of the OAS. This workshop included education and training on money laundering investigative techniques. The RCMP anticipates similar workshops in the future.

CICAD has concentrated on developing uniform measures which can be adopted in member countries. However, many of the initiatives remain in the examination and drafting stages and little has been implemented.

At its formation, CICAD established an action program, which included the preparation of model legislation on the confiscation of earnings from the illicit drug trade, as well as bank secrecy and reporting regulations of financial institutions. The action program includes the promotion of seminars, information programs and research to assist the governments of the member countries in examining the various options available to them in combatting money laundering.

In 1988, CICAD approved a legal development project which recommended the study and possible approval of draft legislation designed to:

- strengthen the ability of appropriate agencies to investigate and prosecute unlawful drug trafficking, including their ability to trace the origin of money deposited in or transferred among financial and other business institutions by drug traffickers;
- forfeit assets derived from, or used to facilitate drug trafficking, irrespective of where such trafficking occurred; and
- treat as a punishable offence the acquisition, possession, use or "laundering" of assets that are known to be directly or indirectly the proceeds of unlawful drug trafficking, irrespective of where such trafficking occurred, and enable such assets to be forfeited.

An important goal of CICAD is the establishment of a close working relationship with the United Nations Fund for Drug Abuse Control (UNFDAC). The United Nations Division of Narcotics Drugs (UNDND) and CICAD have agreed in principle that their respective Secretariats would explore holding an annual programming meeting to coordinate activities and to consider preparing a joint calender of events in the region to avoid overlap.

V. CONCLUSION

The laundering of proceeds of crime is truly an international phenomenon. No longer are operations limited to the country in which the illicit money is generated. On the contrary, the transborder movement of money is now a prominent feature of laundering operations.

Because Canada does not have legislated currency transaction reporting requirements for the international transportation of currency, it is only possible to indicate general trends on the flow of funds (legitimate or otherwise) into and out of Canada. Likewise, comprehensive estimates on the amount of illicit money laundered internationally are not verifiable. However, what is known via police cases and other well documented sources is that most of the large laundering schemes involve an international component.

Indeed, it is estimated that over 80 percent of the police cases examined as a part of this study incorporate an international component. This is in marked contrast to United States estimates which indicate that only 10 percent of illicit drug money generated in the United States moves into international circles.[18] There are many factors inherent in the Canadian economic structure that make Canada vulnerable to use as an international laundering base.

The Canadian economy has traditionally relied heavily on international trade. Canadian chartered banks are respected internationally and maintain branches throughout the world, including in tax-haven countries. Other popular laundering vehicles, such as the securities industry are becoming increasingly international. In addition to the attractiveness of these stable institutions, federal and provincial policies have been geared towards courting foreign investment to Canada.

Further, the involvement of Canada in the global money laundering networks cannot simply be attributed to Canadian criminal enterprises. First, the criminal enterprises are as international as the laundering schemes are. Canadian criminal enterprises themselves are often associated with much larger international crime syndicates in which Canada represents merely one market. Second, cases reveal that illicit money which has been generated elsewhere (most notably the United States) has entered Canada for laundering purposes with few connections with indigenous-based criminal enterprises. Canada is thus inextricably tied to the global laundering network and, thus any efforts by Canadian authorities must incorporate an international character.

Because of the international character of money laundering, much of the onus rests with the federal government. The support of federal regulatory bodies such as Customs Canada, Immigration Canada and Investment Canada must be enlisted to combat money laundering.

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[18] United States, President's Commission on Organized Crime, Interim Report to the President and the Attorney General, The Cash Connection: Organized Crime, Financial Institutions and Money Laundering October, 1984.

As long as funds, licit and illicit, can move freely over the border without there being a legal requirement to record such transborder movement, Canada Customs will continue to be handicapped. Further research must study the alternative systems for recording cross-border movements of currency and evaluate the potential benefits derived from implementing such a system.

Immigration Canada should play an increased role by expanding its mandate and resources to include identifying and verifying the source of funds coming into Canada by immigrants and ensuring that they are indeed legitimate. This can be performed only with greater sharing of law enforcement and intelligence information, and more resources to do follow-up and in-depth investigations both within Canada and within the countries of origin.

Investment Canada officials must be made increasingly aware of the uses of foreign investment as a laundering route. There must then be formally incorporated measures to combat this laundering procedure--including an enhanced screening process of all applicants with a thorough background check, utilizing domestic and international law enforcement intelligence information, to ensure that the incorporators and funds invested are legitimate. This may require instituting more formal and informal relationships and information sharing mechanisms with law enforcement and other relevant regulatory bodies.

Multilateral treaties must be negotiated with tax haven countries to allow for the examination of records and general access for law enforcement. It is now clear that many of these countries cannot simply "stop" being tax-haven countries. Too high of a proportion of their income is derived from the services that they offer. These extensive banking services offer the countries economic stability, white-collar jobs to numerous workers and ties that they might not otherwise have to more developed countries. The realistic aim, therefore, must be to neutralize the effect of these havens. Ratification of the UN Convention is a critical first step to obtaining international cooperation.

Finally, Canada must continue to take a leading role in combatting money laundering internationally through such international organizations as the United Nations, the OAS, Interpol, and the G-7 Economic Summit.

CHAPTER EIGHT

MONEY LAUNDERING AND THE WHITE-COLLAR PROFESSIONAL

I. INTRODUCTION

The majority of large-scale money laundering schemes require the skills and expertise of legal and financial professionals. Laundering the profits of crime is no longer left to the individual members of the criminal organizations; rather it has become an area of expertise for "specialists." The more complex the scheme, the greater the need. As previous chapters have shown, white collar professionals as diverse as bankers, stock brokers, real estate agents, automobile dealers and gemologists possess the necessary access and knowledge to open the doors of the legitimate business community to criminal enterprises. As former U.S. Attorney General Edwin Meese stated:

> "professional money launderers play a key role for any criminal enterprise, whether it's an organized crime family or a narcotics ring. They are functionally equal to a 'fence' utilized by the burglar. They provide a service to the thieves to hide or conceal illegal money. It takes a professional--a lawyer, an accountant, a banker, with all the trappings of respectability--to manipulate these sophisticated schemes"(Organized Crime Digest, June 1985, p.1).

Police cases show that no professionals are more vulnerable to unknowing manipulation or active collaboration with criminal enterprises than lawyers and accountants. The services offered by these professions are particularly desirable, as they possess the skills and status to create and legitimate money laundering operations for a criminal enterprise.

The U.S. President's Commission on Organized Crime (The Impact: Organized Crime Today, 1986, pp. 221-280) makes a distinction between "renegade" or "mob-connected" lawyers who obstruct and subvert the legal process, counsel and participate in a wide range of criminal offenses including intimidating witnesses and perjury, and other lawyers who "do no more than provide ethical legal services for criminals." The distance between these two types of lawyers is unfortunately shaded in greys,[1] and the same range of collusion between criminal and professional occurs within the accounting field.

With good accounting and legal advice, a criminal organization can establish sound business procedures, so that money and business deals do not appear suspect. Lawyers and accountants can also ensure the corporation runs smoothly and avoids mistakes that could lead to unwanted attention. The criminal enterprise pays its taxes and assumes the appearance of legitimacy.

Moreover, the participation of an accountant or lawyer gives any business transaction a legitimate appearance:

> A retired lawyer, who deposited a large quantity of cash in a tax haven account, was confronted about the

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[1] Canadian police cases indicated that some lawyers worked solely for one client or one criminal organization. In these cases, it was clear that their involvement in the criminal activity was extensive. In the United States, there are lawyers termed the "white-powder bar" who specialize in defending clients involved in the drug trade. In most cases, this is a form of specialization with no direct criminal involvement by the lawyers. Other times, the distinction is not so clear.

> cash transaction. He mentioned that he was dealing in real estate and offered his Toronto accountant and lawyer as references. The money was accepted, and he was never again questioned (Canada, RCMP case files).

Unique expertise, high social status and credibility among the financial community, and in the case of lawyers, special solicitor-client privileges that the justice system grants to the legal profession, all combine to make these specialists extremely valuable to money launderers.

II. POLICE CASE ANALYSIS: LAWYERS

A. Lawyers and Money Laundering

Police cases demonstrate that lawyers often perform a significant role in the laundering of illicit money. Two of Canada's largest identified money laundering operations to date were each coordinated by a single lawyer.

Most frequently, lawyers are utilized as part of particularly large-scale money laundering operations. The greater the quantity of cash generated by the criminal enterprise, the greater the need for increased sophistication in the laundering scheme. This increased sophistication in turn is facilitated by certain legal services to construct and maintain the laundering operation. Chief among the services offered by lawyers in a laundering operation include:

- providing a nominee function;
- conducting commercial and financial transactions;
- incorporating companies;
- managing and physically handling illicit cash;

. coordinating international transactions; and

. buying and selling real estate.

1. Providing A Nominee Function

One of the essential services provided by a lawyer to a criminal enterprise is the nominee function. The importance of this nominee service to criminal enterprises cannot be over-emphasized for it plays an important role in many of the largest laundering schemes.

Lawyers are given extensive legal powers to perform many services on behalf of, and in the name of a client. This relationship is protected by strict solicitor-client privileges. This relationship can be abused by money launderers because it can effectively be used to conceal any connection between assets used as laundering vehicles and the criminal organization. Thus, an important objective of the laundering operation is satisfied: the true source and ownership of funds are concealed.

An example of the type of nominee services offered by a lawyer is holding assets "in trust" for clients. This empowers a lawyer to conduct transactions and administer the affairs of the asset on behalf of a beneficiary. Within the context of a laundering operation, a criminal enterprise can place a laundering vehicle "in trust" with a lawyer, thereby effectively obscuring any relationship between the asset and itself. Most often, the type of asset held "in trust" are companies:

> The Cotroneo Family, a Toronto-based organized crime syndicate which specialized in importing illegal drugs to Canada had their lawyer, who conducted the vast

> majority of their laundering operation, hold in trust several Canadian and foreign-incorporate companies (Canada, RCMP case files).

In addition to serving as nominees, lawyers will often seek out others to act as nominees. This third person maintains the anonymity of their criminal clients while distancing the lawyer from the activity. In these situations, the role of the lawyer is to facilitate the relationship between the appointed nominee and the criminal enterprise.

2. Conducting Commercial and Financial Transactions

The effectiveness of the nominee relationship does not cease with its mere formation. Indeed, the true efficacy of this relationship as a laundering tool is grounded in its ability to permit the lawyer to conduct commercial and financial transactions with the criminal enterprises' illicit funds.

As Karchmer notes, the principal laundering service performed by white-collar professionals is the manipulation of commercial, financial and legal transactions in order to disguise the nature of business transactions executed with illicit funds:

> "(these professionals)...are expected to make those deals appear, on paper, as routine commercial transactions, and to invoke privacy laws and other conventions, such as privileged communications, to make the reconstruction of those transactions difficult for investigating authorities" (Karchmer, 1985, p. 31).

Lawyers may also perform transactions for the criminal enterprise without formally establishing a contractual nominee relationship. These unions are usually informal and the anonymity of the criminal beneficial owner is further guaranteed for there are no contracts establishing an association between the attorney and the criminal organization.

3. Incorporating Companies

Criminal enterprises will often utilize both shell and legitimate companies to facilitate the laundering process.[2] Cases reveal that lawyers are involved in numerous capacities in laundering schemes involving companies. First, they are used to incorporate the company. This will include completing all the necessary paperwork and filing the appropriate documents with regulatory bodies, as well as initiating other subsequent details such as setting up bank accounts, establishing board of directors, etc.

Second, lawyers will act as directors, officers, trustees and, in some cases even pose as owners of the company. As indicated above, this nominee capacity is essential to the lawyer's role in the laundering operation.

Third, if the company operates a legitimate business, the lawyer will often manage its ongoing legal, administrative, and financial affairs. The lawyer will often be responsible for fabricating false accounting and legal documentation to facilitate the influx of illicit money into these seemingly legitimate companies:

> A retired Toronto lawyer was instrumental in the role as a money launderer for a major Canadian drug trafficking organization. Among his other laundering

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[2] For complete details on the use of companies as laundering vehicles, see Chapter Five: Money Laundering and the Incorporation and Operation of Companies in Canada.

> activities this attorney incorporated over sixty companies in Canada to facilitate the repatriation of illicit funds previously moved abroad. He served as a director of many of these companies and was essential in directing much of the illicit proceeds through these companies to other laundering vehicles (Canada, RCMP case files).

4. Managing and Physically Handling Illicit Cash

Co-ordination of laundering activities will often entail the actual handling and management of the copious amounts of cash destined to be laundered. This responsibility will range from the launderer accepting the cash from the criminal organization to its counting, bundling, couriering, exchanging and investment.

Cases reveal that these activities will on occasion be handled personally by the lawyer or delegated to a subordinate:

> A Vancouver lawyer specialized in providing specific laundering services to criminal enterprises. This service consisted of couriering and exchanging Canadian currency for American at the Bank of Credit and Commerce in downtown Vancouver. Between March 1985 and July 1987, the lawyer presented $7.4 million cash to the bank. He exchanged a total of $3.1 million from Canadian currency into U.S. funds over a period of 18 bank visits with amounts ranging from $56,000 to $396,000 (CDN).
>
> The lawyer, who never held an account at the bank, would carry the money to the bank in a briefcase and have the cash, mainly $20 and $50 bills, pre-sorted in bundles held together by elastic bands. At one point the branch manager asked about the source of the money and was told: "I'm a lawyer and I'm doing this for clients." The branch chose not to pursue the issue further for fear of losing a lucrative foreign exchange client (Hall 1989, p. 3).

5. Coordinating International Transactions

Sophisticated laundering operations not only use legal professionals, but also utilize international business and financial infrastructures. These two component parts are often used together. In particular, lawyers often facilitate the laundering of illicit money through international tax haven countries.

Police cases indicate that whether the criminal enterprise uses a domestically-based lawyer, a lawyer based in a tax haven country, or both, the legal professional is a crucial medium linking the criminal enterprise with financial services offered in tax haven countries. They will begin by converting cash to a more convenient form, (such as a negotiable instrument, U.S. currency or a wire transfer) and in many cases will coordinate the transfer of the funds out of the country.

Once the funds have been spirited to a tax haven country, the lawyer is used to incorporate companies, initiate bank accounts, establish trusteeships, etc. The lawyer is responsible for ensuring that the illicit money is filtered through these vehicles, and is also instrumental in repatriating the laundered funds to where they originated:

> Cash accumulated from drug trafficking was taken to a currency exchange house by a courier where it was transformed into a bearer cheque. This cheque was then turned over to a retired lawyer who acted as the launderer for the drug trafficking organization. He would personally carry it to Jersey in the Channel Islands where it would be deposited in one of many accounts. Often the launderer would transfer these funds to bank accounts in other tax haven countries. In most instances the bank accounts would be registered in the name of a shell company incorporated or purchased by the launderer.

> Between August, 1983 and April 1987, the launderer purchased eleven incorporated companies in St. Helier, Jersey, Channel Islands. In 1986, he entered into a contract with a trust company in St. Kitts of the British West Indies to invest $3 million (US) in the corporation. As a result both the lawyer and his drug trafficking "client" were installed on the Board of Directors. The money was eventually repatriated to Canada through wire transfers disguised as loans to more than sixty companies established by the launderer in Canada (Canada, RCMP case files).

The launderer recognized the importance of utilizing international tax haven countries to launder illicit money. In correspondence to his client, he wrote:

> "The original purpose of the overseas companies was to use them as a step in routing cash back into your hands that you could not otherwise use" (Canada, RCMP case files).

6. Transacting in Real Estate

Investment in real estate is a popular laundering vehicle and the services of a lawyer often facilitates access to this market.[3] The services of a lawyer are used to establish title in real estate transactions and in many provinces lawyers are exempt from registration requirements when purchasing real estate for clients.

Laundering schemes involving real estate are usually part of a much larger scheme coordinated by a lawyer which involves many other laundering vehicles. Lawyers can act as trustees and draft mortgages. As the following case demonstrates, several of these services can be used in tandem:

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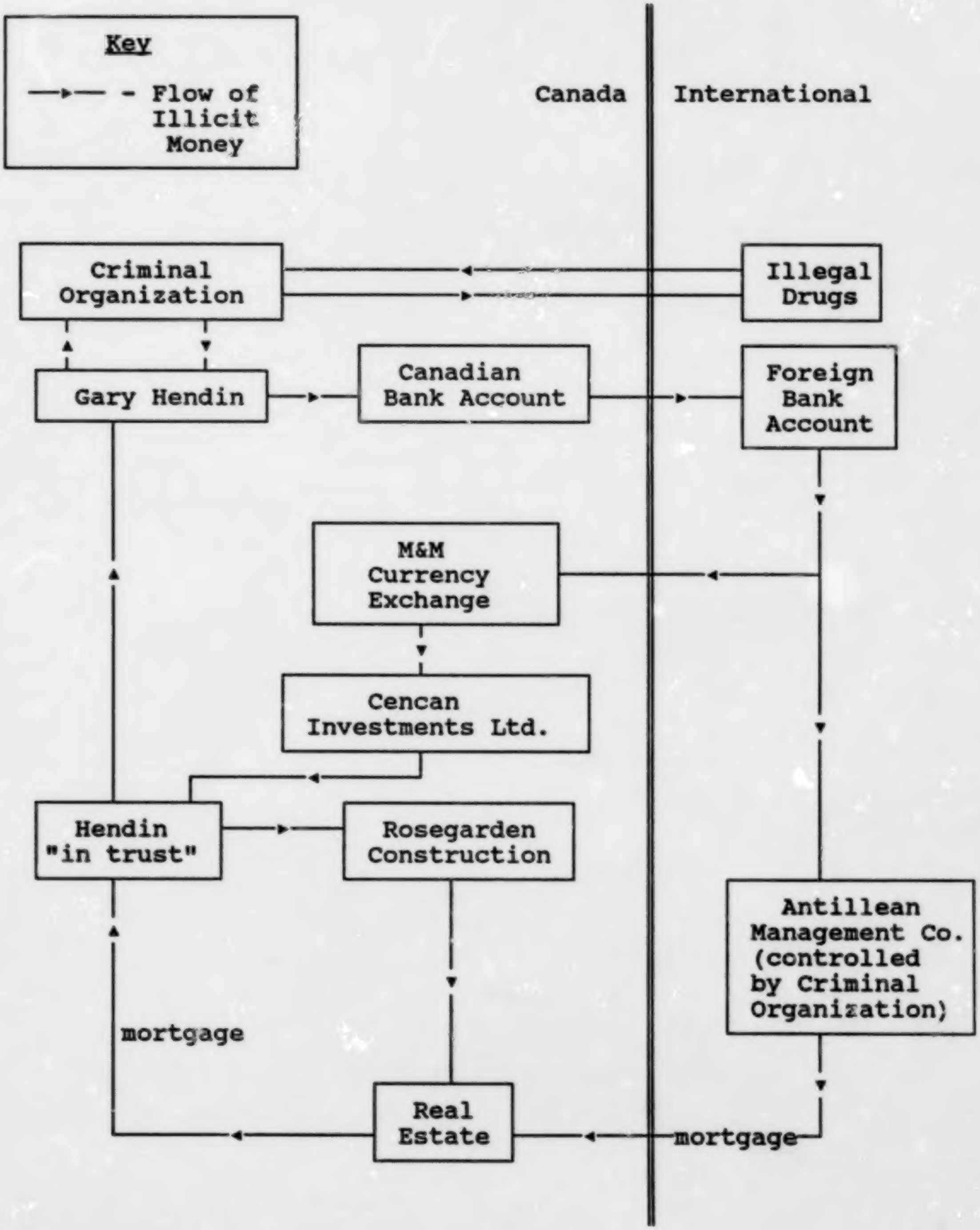
[3] For more details on real estate as a laundering vehicle, see Chapter Four: Money Laundering Through Real Estate in Canada.

Gary Hendin, under the auspices of a Rosegarden Construction company incorporated by Hendin, purchased real estate from a credit corporation. Payment of $330,000 (CDN) came in the form of a certified cheque purchased from a M&M Currency Exchange account payable to Cencan Investments--two companies controlled by Hendin.

This cheque was converted to a bank draft and deposited to Hendin's law practice trust account. Payment in full for the property was disbursed by Hendin to the solicitors of the credit corporation. A mortgage was then registered against the property in favour of Gary Hendin "in trust". The source of the funds was a company incorporated in a tax haven country and owned and controlled directly by a criminal organization. No payments were ever made on the mortgage (Canada, RCMP case files. See following diagram)

Flow Chart: Example of a Gary Hendin Money Laundering Operation


Key
- Flow of Illicit Money
Canada
International
Criminal Organization
Illegal Drugs
Gary Hendin
Canadian Bank Account
Foreign Bank Account
M&M Currency Exchange
Cencan Investments Ltd.
Hendin "in trust"
Rosegarden Construction
Antillean Management Co. (controlled by Criminal Organization)
mortgage
Real Estate
mortgage

B. Summary: Lawyers as Money Launderers

Money laundering has become so specialized that it has developed into an industry in itself. The emergence of the laundering industry has been characterized by the proliferation of unscrupulous white-collar professionals, in particular legal professionals.

In addition to legitimate services normally offered by lawyers, such as acting as trustees, incorporating companies or purchasing real estate, these professional launderers will offer services to criminal organizations tailored exclusively to their laundering needs. This will include counting illicit cash, fabricating financial and legal documentation, bribing officials, acting as couriers, etc. In short, all facets of the criminal enterprises' laundering operations will be coordinating by a specialist who performs it personally or delegates the responsibilities.

Some members of the legal profession take on, according to Karchmer, criminal clients, while relying on legitimate clients to maintain credibility. The percentage of criminal clients to legitimate clients varies, however, in some legal practices the clientele is almost exclusively criminal. Both types of clients will be offered services ranging from providing one or more basic legal services to more sophisticated expertise (Karchmer 1985, p. 30).

Gary Hendin represents one of Canada's most infamous "professional" money launderers. In 1985 Hendin, a disbarred lawyer, pleaded guilty to charges involving the laundering of $12,000,000 over a three year period for a major drug trafficking organization. Police estimate that this amount represents only a fraction of the illicit money laundered by Hendin.

III. REGULATION OF LAWYERS

A. Regulatory Structure

The legal profession is self-regulated by provincial law societies which in turn are empowered to perform this duty through provincial and territorial Law Society Acts.[4] All lawyers and law firms operating in a respective province must be a member of a law society in order to practice law.

All law societies are responsible for the education, licensing, supervision and discipline of the lawyers in the province or territory. Law societies are also responsible for admitting applicants to the Bar, for maintaining contacts with educational institutions, and for delivering library and information services to members of the legal profession.

There is a large variation in the size of law societies in Canada; a variation commensurate with the size of the province. For example, Ontario's Law Society has approximately 250 full time-employees while the Law Society of Prince Edward Island has one volunteer staff member.

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[4] There is no government body which monitors lawyers. The Canadian Bar Association and the Canadian Federation of Law Societies are national organizations to which lawyers and law societies are members. The Canadian Bar Association makes general statements of philosophy and serves as a means of communication for lawyers across Canada. The Canadian Federation of Law Societies operates as a vehicle through which information is disseminated and shared among its members.

While the structure varies with the size of the Law Society, "benchers"[5] are selected and are responsible for reviewing and passing new regulations and deciding on discipline issues. Elections for benchers are held approximately once every one to four years, depending on the province. Along with the elected benchers there are honourary and lay benchers who are appointed. The provincial Attorneys General is one of the honourary benchers.

The law societies are organized into branches and committees, three of which--Complaints, Audit and Prosecution--perform regulatory functions of relevance to detecting, investigating and prosecuting lawyers involved in money laundering.

1. Complaints Branch

The Complaints Branch investigates charges filed with the Law Society by the public or other lawyers. Their investigatory powers are extensive. All law societies, except the Law Society of New Brunswick, have the right to review a lawyer's files. No warrant is needed, and lawyer/client privilege cannot block a review. These investigatory powers, especially the latter which law enforcement agencies do not possess, can potentially be used to reveal a relationship between a lawyer, a criminal organization and money laundering.

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[5] "Bencher" means a member of the governing body. The affairs of the Law Society of Upper Canada were conducted by 44 elected and appointed benchers in 1987. Forty of these benchers were members of the law profession elected by colleagues (Law Society of Upper Canada, 1987 Annual Report, p. 3).

Despite these powers however, there exists inherent limitations in the investigatory process to detect and uncover laundering activities. As mentioned, investigations are initiated by the filing of a complaint. Until a complaint is filed there are few proactive means to detect illegal and/or unethical activities of an attorney. In general, only through law enforcement intelligence information and/or investigation will a law society be made aware of a member facilitating the laundering of money.

If an investigation into a member of a law society reveals an act or acts which contravenes the Law Society Act and regulations it will be taken to the Prosecution Branch of the Law Society.

2. Audit Branch

All law societies, except New Brunswick, require that their members submit an annual audit report.[6] In addition to the annual audit, most law societies will conduct two other types of audits:

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[6] The Barrister's Society Act of New Brunswick gives the Barrister's Society the power to conduct audits only if the member has "conducted himself in a manner deserving sanction" and "an audit of the member's accounts is necessary to help determine the member's conduct deserves sanction." (R.S.N.B. 1986, Law Society Act and Regulations, 1986, s. 18(3). The Barrister's Society of New Brunswick has drafted proposed changes to the Act and hope to have amendments made by the fall of 1990.

i. **A spot audit** is performed on any legal practice which the law society has reason to believe is not acting properly. There may be no advance warning of the audit. This type of audit is also performed in the context of disciplinary hearing.

ii. **A random audit** is an audit of a practice chosen at random by the law society. Such audits are not conducted on suspicion of improper behaviour but are intended to ensure proper record-keeping practices by members at all time.

The chart on the following page summarizes the audits undertaken by each of the provincial law societies.

Saskatchewan, Manitoba, Ontario and Quebec law societies conduct audits with their own staff. The other law societies hire private accounting firms to conduct audits.

An examiner for the Law Society of Upper Canada, as part of the initial audit, completes a standard seven-page questionnaire known as the Law Society of Upper Canada Report. The report is divided into two parts. The first part, the Questionnaire Section, is completed by the lawyer and solicits general information on the practice and its clients as well as the professional conduct of the lawyer. The Inspection Section is completed by the auditor and details the books and records maintained by the lawyer.

Law Society Audits of Members
(figures taken in 12-month period)

	Audit staff	Spot Audits	Random Audit	Yearly Returns
B.C.	none accounting firm	120	none	yes
Alberta	none accounting firm	none	150	yes
Sask.	one part time	10	50	yes
Manitoba	1 full time 2 part time	none	120	yes
Ontario	28	400	800	yes
Quebec	3	none	450	yes
P.E.I.	none accounting firm	none	none	yes
Nova Scotia	none accounting firm	4	none	yes
NFLD	none accounting firm	none	none	yes
N.B.	none accounting firm	none	none	no
NWT	none accounting firm	1	none	yes
Yukon	none accounting firm	none	none	yes

If the initial examination reveals suspicious conduct, the examiner will report this to senior personnel in the Law Society. The report is then reviewed and a decision is made as to whether a more exhaustive spot audit or full-scale investigation is warranted. During the course of an audit a lawyer, if requested by the auditor, is required to hand over all records, case files or other materials which the auditor deems necessary in an examination.

There are four areas of The Law Society of Upper Canada's audit that could potentially facilitate the detection of money laundering by a member:

i. General Audit
The General Category examines the type and history of the practice and its use of deposit institutions.

ii. Books and Records
The Books and Records Section concentrates on the trustee, nominee and other powers that have been delegated to the practice by its clients.

iii. Professional Conduct
The professional conduct section examines in detail the financial aspects of the lawyer-client relationship.

iv. Inspection
The Inspection section, which simply requires a yes or no answer from the auditor, ensures that adequate books and records are maintained by the law practice.

Despite the potential of an audit, there has been no recorded instance in which a law society has uncovered laundering activity through an audit. Even the Law Society of Upper Canada, with a audit department of 28 full-time staff and over 800 spot audits per year, has yet to uncover a money laundering operation involving a lawyer in its almost 200 hundred year history.

The audit report is not geared towards detecting specific transactions which may indicate money laundering or a lawyers relationship with organized criminals. An extensive and detailed auditing practice is necessary to detect money laundering and the audit is confined to ensuring that the records required by legislation and regulations are maintained, not with providing a detailed analysis of these records.

The scrutiny of a more detailed audit can be easily avoided by an unscrupulous lawyer. By meticulously and regularly filing an annual return, a lawyer can avoid any spot audits and the odds of being chosen as the recipient of a random audit are usually small. In a more premeditated fashion, two sets of records can be maintained by the lawyer or can simply avoid conducting transactions for the criminal organization under the auspices of his private practice.

In short, the audit of a law practice is not detailed enough to reveal money laundering. The best service it presently performs is to ensure that books and records required by legislation and regulations are maintained which can facilitate subsequent investigations. However, the unscrupulous lawyer can easily circumvent a more detailed audit and/or investigation.

3. Prosecution Branch[7]

For minor charges involving simple legal procedural problems, the lawyer is presented with "an invitation to attend." The lawyer is under no obligation to attend, but by convention a lawyer does not refuse such an invitation. For minor charges, an "invitation to attend" serves as an educational seminar, where the lawyer is informed of appropriate legal procedures. The "invitation to attend" is held _in camera_, and no public record is made of the session.

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[7] The prosecution procedures vary slightly across the country. The Law Society of Upper Canada is the model used for this section.

More serious cases are brought before the Discipline Committee. After a full investigation has been made, a law society bench member authorizes a hearing. An affidavit is sent out to the lawyer stating the charges and hearing date.

Hearings are held before elected bench members and are conducted using courtroom procedures. There are opening and closing statements, witnesses are called and evidence is given. The hearing is public, unless there is information about intimate physical relationships, financial relationships, or if it is considered in the best interest that the hearing be held in camera. The public's "right to know" is weighed into this decision.

After reviewing the evidence, the board can decide to dismiss all charges or impose one of five disciplinary actions which are then made public:

i. Reprimand in Committee
The lawyer is verbally reprimanded in the presence of the committee reviewing the case. All errors are pointed out, and recommendations to improve performance are made.

ii. Reprimand in Convocation
The lawyer is reprimanded in published reports of the law society. These reports are distributed to all members.

iii. Continue Practice under Supervision
The lawyer is allowed to continue practising, but must be under the supervision of another lawyer. All case files are reviewed by the lawyer assigned to monitor the practice.

iv. Suspend Practice
When a lawyer's misconduct is serious or chronic, a suspension might be warranted. Suspensions vary in duration from one month to several years and are sometimes imposed when the problems are not directly work-related. In one case, a lawyer was suspended and told to join a support group for alcoholics. After receiving help, the lawyer was allowed to continue his practice.[8]

v. Disbarment
Automatic disbarment occurs if a lawyer is found guilty of a criminal offence, if there has been major dishonesty, lack of integrity, or any other serious case of misconduct. The lawyer's name is removed from the list of members, and is no longer allowed to practice law. In certain circumstances, the lawyer is given an opportunity to resign instead of being disbarred.

All but the "Reprimand in Committee" are presented in the form of a recommendation before the Convocation of all elected and lay benchers of the Law Society. The Convocation reviews the case and decides whether to approve the recommended disciplinary action.

B. Strengths and Weaknesses of Regulation

There are inherent strengths and weaknesses to the laws societies' prosecution and disciplinary powers as it relates to lawyers as money launderers. The strengths revolve around the varied and extensive disciplinary powers which can be used to punish an attorney found guilty of an offence such as money laundering.

Disciplinary action will usually occur only as the result of an internal investigation following a complaint. The complaints are usually situations where clients feel themselves to have been badly represented, over-charged or mislead by the lawyer rather than detection of criminal behaviour. However, if the Crown fails to prosecute a lawyer following a criminal investigation or fails to establish guilt, law societies can still discipline the lawyer for activities which violate their standards of conduct.

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[8] Personal interview with Michael Carrier, Secretary, Law Society of New Brunswick, April 1, 1989.

While cases are few, there is a responsibility for the members of the profession to promptly inform the law society about alleged wrong doings within their law firms and there may be some indications that lawyers are having to take these responsibilities more seriously than in the past.

For example, the Law Society of Upper Canada has felt the need to call an independent inquiry following the criminal investigation into the conduct of Martin Pilzmaker.[9] This inquiry follows an intense period of controversy, accusations of favouritism and resignations from the Law Society of Upper Canada. This is the second time in a month that the Law Society has felt the need to ask an outside person to review its handling of misconduct complaints.[10] As the "Lang Michener" case indicates, the law societies have a responsibility to ensure that members of the profession report to officials instances of misbehaviour that come to their attention. How conscientiously this is being done is unknown. During a closed session, Ontario's Attorneys General Ian Scott advised the benchers of the Law

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[9] The so-called "Lang Michener affair." Mr. Pilzmaker was formerly of the Toronto firm of Lang Michener Lawrence and Shaw.

[10] See The Lawyers Weekly, February 9, 1990,p.10-11 "Ontario Benchers in Uproar Over favouritism Charge"; February 16, p.2 "Ex-Manitoba Justice to Probe Favouritism Charge"; and February 23,p.2 "Past Ontario Law Society Discipline Chair Quits as Bencher."

Society of Upper Canada, to "overhaul its competency, discipline and complaints processes."[11]

The majority of services offered by attorneys, and abused by criminal enterprises, are legitimate services normally performed by lawyers and thus attract little suspicion. Services tailored specifically to the laundering needs of a criminal organization are also emerging as an industry itself.

If lawyers do not question their clients about the reasons behind the incorporation of a company, or blindly conduct large cash transactions for the purchase of assets such as real estate, then they can easily facilitate money laundering. By acting as a nominee, the lawyer conceals any connection between assets and a criminal organization and creates a sense of legitimacy by subsequent financial and business transactions.

Law enforcement has unique difficulties in obtaining information to build cases against these professionals. Central to the integrity of the legal system must be images of equality of treatment. Yet within our justice system the lawyer holds a privileged position.[12] As Carr states:

> "Participants in organized criminal ventures may be assumed to have a greater than average need to recourse to legal counsel, and their conversations will be of more than average interest to the monitoring agents. But neither the agent's interest nor the investigatory usefulness of the conversations justifies electronic intrusion into the zone of privilege" (1989, 5.5 [a][1]).

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[11] Minutes from this closed meeting fell into the hands of the media and were reported in the Lawyers Weekly, Feb. 16, 1990, p.2.

[12] See Harvard Law Review, "Developments in the Law: Privileged Communications" Vol. 98, pp.1450-1666.

While, some legal experts would extend this privilege into all lawyer-client interactions regardless of the criminal involvement of the lawyer, the U.S. President's Organized Crime Commission (1985) rejected these arguments. In the Commission's view, without the use of undercover agents, electronic surveillance and "sting" operations, attorney-client privilege would be an "impenetrable shield protecting lawyers who engage in a wide variety of criminal actions" (The Impact 1986, p. 272).[13]

In Canada, the privileges granted to lawyers take diverse forms. These privileges assume that the lawyer is innocent of criminal involvement and focus on protecting the legitimate relations between lawyers and clients. For example, the Criminal Code sets out special conditions for the execution of a search warrant when a lawyer's office is involved (s.488.1 [1]); the proceeds of crime legislation exempts from confiscation proceeds sufficient to cover legal expenses (s.462.34[4]); and no authorization may be given for electronic surveillance of a lawyer's office unless the judge has reasonable grounds to believe that the lawyer has been, or is about to become, a party to an offence (S186.[2]).

The difficulty will now be to obtain the evidence required to justify the authorization. There are court decisions that diminish the strength of lawyer-client confidentiality when the client approaches the lawyer, knowingly to consult for advice or other services that will advance criminal or fraudulent activities. However, this cloak of confidentiality is not likely to be broken when the lawyer is an accomplice to the scheme.

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[13] In October 1989, the Internal Revenue Service in the United States launched a national operation that targets lawyers for failure to provide details about their cash-paying clients. Titled the "Attorneys Project," certified letters were sent to 2,400 lawyers, with many more letters to follow. Form 8300 must be filled out by professions, trades and businesses which receive $10,000 or more in cash in one transaction. Failure to file is now a felony offence. Criminal defense attorneys say this project violates their attorney-client privileges and are lobbying against the reporting requirements (Money Laundering Alert, 1989, Vol. 1, Number 3).

It is still too early to know the impact, but one can assume that the 1990 Duarte Supreme Court decision will severely curtail the number of informant and "sting" operations, whereby undercover agents might have approached a lawyer requesting laundering advice.[14] The Duarte case dictates that authorizations from a judge must be obtained for all wire-taps of private conversations. The lawyers who assist the police to prepare the authorizations and the judges who sign, may be particularly hesitant about encouraging the police to proceed with a surveillance of one of their colleagues offices.

Closer ties must be forged between the law societies and law enforcement. Most provincial law societies are accorded sufficient powers to regulate members--if the resources were there to follow through. With adequate resources, law societies could proactively identify, through audits, law practices that launder illicit money.

The law societies' investigatory powers also allow them to demand to see records and overrule solicitor-client privileges--a power that police forces do not have. By becoming more aware of how lawyers can be used to assist money laundering and communicating this to their members, law societies can serve a greater preventative role.

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[14] Duarte v. The Queen, January 1990. As a result of this decision, police will no longer be able to conduct "participant surveillance" whereby an informer or an undercover agent agrees to the wire-tap and in this manner gathers evidence against a suspect. Authorizations will now be required for all electronic surveillance of private communications (Duarte v. R., [1990] 17 C.R.D. 950-01).

IV. POLICE CASE ANALYSIS: ACCOUNTANTS and MONEY LAUNDERING

As with legitimate businesses, criminal organizations experience significant cash flow, revenue and expenses, assets and liabilities that can only be managed by an individual possessing accounting skills. In this context accountants are called upon by criminal enterprises to provide a number of accounting services. In general, because of the copious amounts of cash generated by drug trafficking, the primary job of the accountant is to keep track of the illicit proceeds:

> Cash revenue from the business of Edmonton drug trafficker Stephen Paul Pakozdy, would be delivered to an accountant hired expressly to keep track of the drug business proceeds. A routine developed in that when the bookkeeper amassed $60,000 the cash it would then be turned over to Pakozdy who would use one of several methods to launder the money. The RCMP estimate that Pakozdy generated over $1,000,000 through his trafficking business (Canada, RCMP case files).

In addition to managing cash proceeds, accountants lend their particular skills to manipulating financial and business documentation to augment and conceal laundering activities. These include:

- falsifying invoices;
- misusing the materiality factor; and
- employing dubious bookkeeping practices.

1. Falsifying Invoices

This is done to conceal the movement of money within and outside a company. For example, restaurants used as money laundering fronts falsify receipts to generate large cash sales. The money, however, comes from the illegal activities of the criminal enterprise.

As law enforcement gets increasingly sophisticated in working out financial net-worth calculations on suspects, it is essential that the accounting processes used by criminals are equally sophisticated.[15] Assets acquired must be accounted for. False invoices indicating fraudulent profits assist in building this factitious empire.

2. Misusing the Materiality Factor

No audit can account for every dollar that enters or leaves a company. Therefore, if the difference between what the financial records and the auditor's calculations are within an agreed-upon acceptable range, the books are said to "balance," and the amount of unaccountable funds are said not to "materially affect" the company.

For larger corporations, this materiality factor can be in the hundreds of thousands of dollars. Many money laundering schemes take advantage of this factor because such discrepancies are not regarded as suspicious by the auditor.

3. Employing Dubious Bookkeeping Practices

Various bookkeeping techniques can be used to disguise the movement of illicit money. Corporate books can be falsified, or two separate sets of books can be kept. Expense reports can be exaggerated; invoices created for non-existent supplies; non-business items can be included; fictitious or duplicate items can be registered; and there can be an over or understatement of income or net worth.

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[15] "Net-Worth" refers to a process of analyzing a person's financial status including total accumulation of wealth and annual expenditures to indicate discrepancies between legitimately acquired assets and total assets. The Proceeds of Crime legislation includes a "Proof by Inference" clause that allows the court to infer that property was obtained or derived by crime if the defendant's total assets amount to significantly more than the legitimately acquired assets.

4. Creation of Unregulated Financial Services

Relatively new fields of "specialization" are opening up that bring with them a legitimacy that can be utilized by the criminal launderer. As more legitimate business persons attempt to invest wisely and avoid excess taxes, more people are turning to specialists such as "financial planners" for advice. These groups are as yet largely unregulated.

Illegitimate operators may benefit from the status and credibility of the professional accountant associations. These advisors can hold money and invest for clients and may arouse less suspicion with financial institutions than a private individuals using cash for similar transactions.

The financial planner/consultant may be used wittingly or unwittingly by the criminal launderer. The first example involves a criminal using a financial consultant unwittingly:

> A Toronto drug trafficker utilized the services of a local financial investment counsellor. What began as procuring advice, soon evolved into the counsellor actually making investments for the criminal launderer. Despite having investments and his fee paid for in cash, the consultant pleaded innocent to suspecting his client of laundering drug money (Canada, RCMP case files).

Here a criminal utilizes the expertise of a professional which in turn adds legitimacy to the laundered funds and the criminal launderer.

The second route involves a criminally-controlled consulting firm or one controlled by a corrupt owner. The advantages of this route are manifold. Illicit money flowing through the firm can be reported as legitimate investments of clients which are simply being facilitated by the consultant. In addition, illicit funds can be disguised as commissions generated from these investments:

> A corrupt official with Public Works Canada (PWC) collaborated with a PWC consultant to have a Swedish company pay $400,000 in kickbacks in return for securing for the Swedish Company a procurement contract with the Government of Canada. The illicit funds generated from the kickbacks were laundered through a bank account of the consultant's business under the guise of consulting fees. Part of the proceeds were then transferred to a personal account of the PWC official through computerized banking facilities (Canada, RCMP case files).

The establishment of a financial investment consulting firm allows a criminal access to other laundering vehicles. The securities market is susceptible to this as investing on behalf of a beneficial owner is an accepted part of the industry. In addition, as the following case demonstrates, consulting firms can gain access to banking institutions:

> Antonio Monteiro operated a consulting firm in Toronto which in fact was controlled by a Portuguese bank. The only purpose of this consulting firm was to receive funds for transfer out of the country. To facilitate this process, his company maintained bank accounts in Toronto through which funds would be deposited and wire transferred. Since his company was a consulting firm, funds passing through the accounts could be disguised as consulting fees. Investigation revealed that individuals could go to this firm and have funds transferred out of the country with no questions asked (Canada, RCMP case files).

While it was never determined whether illicit funds were actually transferred through this set up, this case demonstrates how easy and effective this route can be to launder money, both domestically and internationally. It demonstrates how easy it can be to establish oneself as a consulting firm and it also demonstrates how it can be used as an effective guise under which to launder illicit monies through banks.

V. REGULATION OF ACCOUNTANTS

A. Structure of Regulation

Accountants in Canada are self-regulating professionals. In general, the accounting profession can be demarcated into three branches: chartered accountants, management accountants and certified general accountants.[16] All three of these branches are regulated at the provincial level by a self-regulatory body dedicated to one of the three branches. For example, in Ontario, The Institute of Chartered Accountants of Ontario, The Society of Management Accounts of Ontario and The Certified Public Accountants Society of Ontario each regulate its respective branch of the profession.

It is mandatory that all certified general accountants, chartered accountants and management accountants receive accreditation from and become members of the respective provincial self-regulatory association in order to legally practice in a provincial jurisdiction. Each of these provincial self-regulatory bodies, in turn are represented at the federal level by a national association; the Certified General Accountants Association, the Canadian Institute of Chartered Accountants, and the Management Accountants Society respectively.

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[16] Quebec is the only province with legislation to regulate financial planners. In all other provinces, anyone can use that title, give financial advice and operate in relation to other financial institutions as a credible professional. "The Canadian Association of Financial Planners" have operated since 1983 as the professional association for this group of financial advisors and has approximately 1100 members but membership is voluntary and as such the Association has limited regulatory power.

The powers to regulate by the provincial bodies are established through provincial legislation and association by-laws and code of conduct. In general, the mandate of the self-regulatory bodies is to protect the public interest by ensuring there is a level of knowledge, skill and proficiency of members and that all members and students adhere to professional and ethical standards (Institute of Chartered Accountants of Ontario, p.1 and British Columbia, Accountants [Chartered] Act, R.S.B.C. 1979, c. 2, s. 3).

To carry out its mandate, the self-regulatory body is responsible for the education, licensing, supervision and discipline of its provincial members. Education specific to each branch of the profession is carried out at the provincial and/or national level of the branch. The self-regulatory body in turn licences all graduates of the course as well as those who have accredited credentials from other jurisdictions.

The self-regulatory body performs both a proactive and reactive regulatory function. Proactively, many of the bodies conduct periodic examinations of members to ensure compliance with the codes of conduct and by-laws. In general, these examinations are conducted every three to four years and a random sample of members is chosen.

The bodies are also given extensive investigative powers. For example, the self-regulatory body can require its members to hand over all books and records. Once wrong-doing has been detected the self-regulatory body has the power to expel the member from the organization according to its code of conduct and disciplinary procedures.

B. Self-Regulatory Bodies: Strengths and Weaknesses

The self-regulatory bodies possess both strengths and weaknesses in their ability to facilitate law enforcement in combatting money laundering.

The strengths of the self-regulatory body centre around the existing code of conduct, by-laws and provincial legislation which endows these bodies with regulations aimed at accountants engaging in illegal activity. These regulations are conducive to the illegal practices an accountant would engage to facilitate money laundering. For example, the Institute of Chartered Accountants of Ontario lays out the following regulations:

- It prohibits members from assisting criminals in any way possible.
- Any member who has been criminally convicted is expelled from the organization.
- A member is prohibited from lending his/her name to unlawful activity.
- A member cannot associate himself/herself with false and misleading information.[17]

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[17] Personal interview with Peter Carroll, Director of Ethics, The Institute of Chartered Accountants of Ontario, March 8, 1990.

To enforce the code of conduct, the majority of the self-regulatory bodies, as mentioned above, incorporate compliance examination functions, investigative capacities and disciplinary procedures. However, many of the weaknesses are related to the ability of the self-regulatory body to proactively detect an accountant facilitating the laundering process through these existing mechanisms.

First, only a small proportion of members are ever subjected to compliance examinations. This is due to the infrequency of examinations and the small number of members chosen through random sampling. This places great limitations on the ability to proactively detect an accountant facilitating money laundering. Second, the self-regulatory body can only investigate when a complaint against an accountant has been registered by a member of the public or by another accountant. Thus, the investigative approach cannot detect members who are facilitating the laundering of money.

The education capacity of the associations can serve as a useful mechanism for increasing awareness of money laundering among members. Through education and a specific focus on money laundering, these self-regulatory bodies can potentially facilitate law enforcement's efforts in combatting money laundering.

Finally, the regulation of the accounting profession is quite decentralized at both the professional and geographic level. This in itself presents both strengths and weaknesses for efforts to combat money laundering in this profession. The weaknesses lie in the fact that within the accounting profession and across the country each self-regulatory body operates relatively autonomously, potentially jeopardizing national and industry-wide uniformity. The strengths include a smaller and more defined target audience in which awareness-raising and education on money laundering can be directed. Further, while each province has its own professional association, the issue of money laundering can be coordinated through their national associations.

In short, while there has been no initiatives taken specifically on the problem of money laundering by the self-regulatory bodies, existing mechanisms exist at all bodies which can facilitate law enforcement in combatting money laundering as facilitated by professional accountants. Through greater awareness, education and resolve, this existing infrastructure can be improved to increase the self-regulatory bodies' efficacy in combatting this problem within all facets of the accounting profession.

VI. ROLE OF ACCOUNTANCY IN COMBATTING MONEY LAUNDERING

The accountant's skills are not only part of the problem, but also part of the solution. The increased sophistication of laundering operations necessitates the proactive involvement of accountants in an auditing function as a means to detect illicit funds through private and public corporations as well as a reactive involvement of forensic accountants in creating paper trails integral to the successful prosecution of money launderers.

It is important that the accountancy profession assume a more active role, both proactively and reactively, in combatting money laundering. To appreciate their potential significance, the role of accountants and specialized accountancy techniques must be analyzed. This includes: accountants as auditors, financial forensic specialists and Revenue Canada Taxation auditors and special investigators.

A. Accountants as Auditors

As auditors, accountants can potentially perform a significant role in proactively detecting illicit monies invested in the business and financial communities. This role is most conducive to two laundering vehicles often utilized by launderers: criminally-controlled companies and deposit-taking institutions.

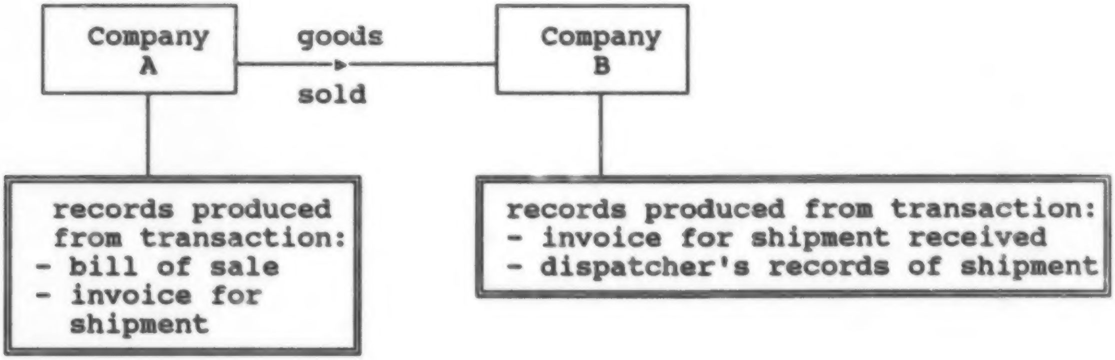
a. Audits of Companies

Through the federal and provincial legislation governing public corporations accountants are given extensive powers to audit public companies. When hired by a public corporation to conduct an audit, an accountant has access at all times to every "record, document, instrument, account and voucher of the company and its subsidiary and is entitled to require from the directors, officers and employees of the company and its subsidiaries information and explanations necessary, in his opinion, to enable him to report as required..." (British Columbia, Company Act, R.S.B.C. 1979, c. 59, s. 220).

The primary role of the auditor of a corporation is to "make the examination that is in his opinion necessary to enable him to report in the prescribed manner on the financial statements . . . to be placed before the shareholders . . . (Canada, Business Corporations Act R.S.C. 1985, c. C-44, ss. 169[1]).

Despite the mandate of the auditor, the audit as a tool for the detection of money laundering is hampered by the following weaknesses. First, the auditor is hired by the company itself, potentially allowing for the criminal enterprise to control, manipulate and corrupt the auditor. Second, audits are mandatory only for public corporations, that is, companies whose shares can be purchased in the open market. Private companies need only prepare a financial statement or "Notice to Readers" to show to money lending institutions and company board members or for income tax purposes. Cases show that most criminally-controlled companies are private and thus are able to circumvent auditing requirements.

In addition, conventional auditing techniques are not geared to the detection of money laundering. More specifically, the power to investigate company files is limited to the specific company being audited. To detect money laundering, however, it is often necessary to go beyond the conventional review of internal controls of a single business entity, as criminal enterprise will often disguise laundering through fake transactions between two or more companies. As the following figure illustrates, it is important to trace the money from company to company; just examining one set of books cannot confirm whether the transactions are legitimate. The following diagram traces the paper flow between two companies doing business with one another:


Company A
goods
sold
Company B
records produced from transaction:
- bill of sale
- invoice for shipment
records produced from transaction:
- invoice for shipment received
- dispatcher's records of shipment

In this example, if company A was being audited, the auditor would assess Company A's bill of sale and the invoice for a shipment. If the company's records are consistent and reflect the financial statements, the investigation stops.

Unfortunately, invoices can be easily falsified to make transactions appear legitimate. Falsifying records is particularly easy for criminal enterprises which control both companies. Finally, as emphasized earlier, laundering schemes often involve international shell companies which can make analysis of required records impossible.

To determine fraud, the auditor would need to take the extra step of assessing Company B's records. Checking these invoice records may still indicate a balanced transaction, but the dispatcher's records, showing how many shipments of the goods were sent to other locations and the quantity of the goods shipped, could be used to draw an accurate comparison what was sold and the money received.

An accountant hired to audit the company's books would not normally consider looking at the dispatcher's records. Nor would the auditor have the power to confirm the Company B's invoice of shipment received. Company A could inflate the amount of money received for a small quantity of products delivered, and the auditor would not be able to detect any wrongdoing.

b. Audits of Financial Institutions

In general, a deposit-taking institution employs two types of audits: internal and external. As per legislation, federally and provincially-regulated banks, trust companies and credit unions must appoint at least one firm of accountants to be external auditors of the institution during its fiscal year.

The primary objective of the external auditor is to "make an examination that is in their opinion necessary to enable them to report on the financial statements required [by legislation] to be placed before the shareholders..." (Canada, Bank Act, R.S.C. 1985, c. B-1, ss. 241[2]). The auditors are given extensive powers to audit including access to all records, minutes, accounts, cash, securities, documents and vouchers of the institution as well as information and explanations from its employees, directors and officers. (Canada, Bank Act, R.S.C. 1985, c. B-1, ss. 241[2 & 3].

Notwithstanding these powers, the weaknesses of the external audit lies in the fact that, for the most part, it analyzes the overall financial solvency of the institution. As such there is no detailed examination of individual transactions and customers that would detect money laundering and money launderers respectively.

Internal branch audits are also conducted by the institution itself to evaluate the cost-effectiveness of programs as well as detect in-house fraud. As these audits are conducted by staff accountants, all books and records are easily obtainable. As the following case demonstrates, internal branch audits of deposit-taking institutions are much more conducive to detect money laundering:

> The Montreal Caisse Populaire de Notre Dame de la Merci discovered through a routine internal audit that it was being used to launder money. The auditors discovered that within a three-week period, one man made cash deposits totalling over $3.7 million (CDN) into an account controlled by the caisse itself.
>
> The depositor was a manager of a gas station and said the large cash deposits came from businessmen involved in a real estate deal. Upon its discovery the bank conducted an internal inquiry and notified the RCMP. It was discovered that the money was the product of drug trafficking (Marsden, May 26 1988, p.3).

B. Forensic Accounting

Forensic accountants are investigative accountants whose audits go beyond standard auditing procedures to the detection of such white-collar crimes as misappropriated funds, hidden assets, scam investments, phoney claims, contested divorces and money laundering. More specifically, forensic means preparing evidence for court; the chief difference between forensic accountants and police labs being that "they examine documents and cancelled cheques, instead of firearms and debris at a crime scene" (McIntosh, 1989, p. 22). Concurrent with preparing evidence for trials, forensic accountants are called upon to provide impartial, expert testimony in a court of law.

Increasingly, law enforcement is turning to forensic accountants to facilitate the prosecution of white-collar criminals. Forensic accounting is a relatively new field - its genesis in Canada dating back to 1974 when three young Toronto accountants set up their own firm specializing in detecting white-collar crime. As the validity of a chartered accountant's expert testimony in a court of law was increasingly recognized, the rest of the accounting profession took notice. Today, large accounting firms such as Peat Marwick Linquist Holmes, Deloitte Haskins and Sells and Thorne Ernst and Whinney all employ forensic specialists (McIntosh, 1989, p. 22).

Most police forces in Canada do not maintain in-house forensic accounting units. This is based upon three basic reasons. First, in most cases it is less costly to employ accountants on a contractual case-by-case basis and second, it is important that the testimony of a forensic accountant be one of impartiality (i.e. not a member of a police force). Finally, while the RCMP has investigators trained in accounting, it does not perceive the need for a specialized forensic accounting unit. It believes that a good police officer can conduct any type of investigation, and it is not necessarily beneficial to have accountants on staff.

As a result, most police forces utilize accountants on a permanent or case-by-case contractual basis. The OPP Anti-Rackets Division, for example has two private accountants on contract. These accountants have worked exclusively for the OPP for four years. In contrast, the RCMP usually hires accountants on a case-by-case basis.

The OPP, RCMP, Metro Toronto Police Force and Quebec Police Force agree that private accounting firms with forensic accounting expertise should be brought in only at the end of an investigation to prepare court evidence.[18] In 1989, the Metro Toronto Police Force had a $50,000 budget for the hiring of forensic accountants (Trew, 1989). The OPP Anti-Rackets Division has a $650,000 forensic accounting budget, and such accountants are used in 75 percent of all cases (Christopherson, 1989).

C. Revenue Canada, Taxation: Auditors and Investigators

The role of Revenue Canada, Taxation (RC-T) in combatting money laundering cannot be overemphasized. Empowered with the statutory authority to process tax returns it constitutes a significant regulatory and law enforcement tool.[19] The role of RC-T can be seen through two integral positions - the auditor and the special investigator. Dormant companies and people who do not file income tax returns are commonly part of money laundering operations. Policing of this potential enforcement gap is carried out by a team of forensic accountants who produced 35,000 audits and 206 special investigations in 1988.[20]

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[18] According to the OPP, the land fraud case involving Greymac, Seaway, and Crown Trust illustrates the negative consequences of involving private accounting companies in the initial stages of an investigation. In 1983, the accounting firm of Peat, Marwick, Linquist and Holmes was hired by the OPP to help with the paper investigation of the trust companies. Between 1983 to 1986, the OPP paid the accounting firm over $2 million. If the OPP had its two contract accountants in 1983, the private accounting firm would not have been engaged early in the investigation, and thus the cost would have been much reduced.

VII. CONCLUSION

White-collar professionals, especially lawyers and accountants knowingly and unknowingly assist criminals through money laundering. The complexities of the legitimate business and financial world through which the majority of illicit money is laundered necessitates the involvement of financial and legal professionals. The expertise of these professionals combines with their social status and credibility to facilitate or orchestrate laundering schemes.

Both are significant to the laundering process due to the increasing financial and legal complexities of the laundering operation. In addition to the traditional accountancy branches, new groups are forming that appear professional but are largely unregulated and unrestricted as to membership.

Drug trafficking generates copious amounts of illicit money which cascades through many sectors of Canadian society. All professionals who provide services potentially useful to money laundering by criminal enterprises are thus vulnerable to manipulation or participation. An aware and vigilant professional community can serve as a major safeguard to the further infiltration of illicit funds in Canadian society.

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[19] See Chapter Ten: Money Laundering and Law Enforcement for more information on the role of Revenue Canada.

[20] Correspondence with Mr. Don Banks, Deloitte, Haskins and Sells, January, 1989.

The use of accountants and lawyers by criminal enterprises to disguise illicit money highlights the importance of professional regulation and education. Self-regulated professions who accept the benefits that relative autonomy ensures, must also accept the responsibilities.

The clients of these professionals will not likely be complaining about the services received. Hence, reactive responses will prove inadequate. Colleagues must be encouraged or obligated to report misconduct and formal disciplinary committees must aggressively seek it out. In fact, however, the ability of accounting organizations and law societies to police their members is limited, by lack of mandate, resources, and commitment to the implementation of preventive monitoring procedures.

CHAPTER NINE

MONEY LAUNDERING AND LAW ENFORCEMENT

I. INTRODUCTION

The law enforcement task of identifying and investigating proceeds of crime offenses is extremely difficult. The elaborate array of interwoven mechanisms within money laundering operations are purposely designed to conceal the origin and ownership of illicit proceeds and in the process to create a seemingly legitimate source.

Money laundering investigations by law enforcement are also inherently complex. At one level, these investigations concentrate predominately on financial aspects of the crime. Thus, they require a detailed knowledge of financial accounting and commerce--investigative techniques not traditionally associated with most Criminal Code offenses. Moreover, because laundering operations are not confined to any one segment of the business and financial communities, investigators must be familiar with the intricate details of many divergent areas of the private business sector.

At another level, because an asset forfeiture requires that a enterprise crime or drug offence be established, proceeds of crime investigations are carried out concurrent with traditional criminal investigations. Thus, by themselves, and more importantly in the context of larger enterprise crime and designated drug cases, money laundering investigations must incorporate all aspects of traditional police investigative techniques and resources, including:

- street level enforcement;
- undercover operations;

- surveillance;
- search warrants;
- sophisticated intelligence gathering and analysis;
- the use of informants and referrals; and
- criminal, as well as financial, investigative experience.

Comparisons can be made between money laundering and the "fencing" of stolen goods. Both of these activities allow the criminal to benefit economically from the criminal activity. Denying the thief the ability to easily dispose of the stolen goods, and denying the organized criminal the ability to make use of the illicit proceeds are both enforcement activities that target the proceeds in an attempt to reduce the predicate offenses. Just as law enforcement against those who facilitate the selling of stolen goods may lead to individuals who straddle the line between criminal and legitimate society, likewise money laundering investigations may lead the police to lawyers, businessmen, developers etc.--individuals who have influence and in some cases power within the societies.

There are "professional" fences and there are "professional" money launderers. However, in addition, non-professionals play an important role in laundering schemes. Just as ordinary citizens are known to take advantage of the black market, otherwise law abiding individuals in business are prepared to facilitate financial or legal transactions, sell cars, real estate, or other assets under extremely suspicious circumstances.

Notwithstanding the shared characteristics between money laundering and the fencing of stolen goods, money laundering differs from most other crimes in a key respect:

> "It is a ancillary form of crime - a support service - that bolsters the ability of narcotics traffickers, racketeers and other criminals to ply their trades. Therefore the goals and objectives of enforcement programs to combat money laundering differ from the traditional deterrence goals or programs against most other crimes (Karchmer, 1988, P. 47).

This chapter will identify and analyze the existing infrastructure and resources dedicated by Canada's police forces to combat the problem of money laundering. Time and resource limitations made it impossible to study every Canadian police department. As such the focus of this chapter is dedicated largely to the RCMP, Ontario Provincial Police and The Metropolitan Toronto Police Force[1].

The remainder of this chapter is demarcated by the following areas, all of which have been identified as significant elements inherent in a successful proceeds of crime investigation:

- structure and organization of the force;
- investigative techniques;
- personnel recruitment, training and education;
- intelligence programs;
- computer-based information retrieval and analysis;
- utilization of forensic accountants;
- interaction with Revenue Canada, Taxation and Customs;
- interaction with regulatory bodies;
- legal powers; and
- international resources and cooperation.

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[1] In addition to Metropolitan Toronto Police Force, cursory surveys were conducted with the following municipal and regional police forces: Vancouver, Edmonton, Calgary, Saskatoon, Winnipeg, Waterloo, Hamilton-Wentworth Regional, Durham Regional, Montreal and Halifax.

In order to provide a context in which to analyze enforcement of proceeds of crime offenses, the steps of a money laundering investigation by law enforcement will first be traced.

II. LAW ENFORCEMENT PROCEEDS OF CRIME INVESTIGATIONS

Because of the vast array of laundering vehicles available to the criminal enterprise, money laundering operations are extremely diverse. However, notwithstanding the distinctiveness of each investigation, a framework for a proceeds of crime case can be constructed and its investigatory steps traced from the initiation and development of the case to its prosecution and forfeiture.

The following scenario is based upon a hypothetical investigation conducted by the RCMP Anti-Drug Profiteering Unit.

A. Initiation of the Case

The first stage of an investigation is its initiation. There are four ways in which a proceeds of crime investigation can be initiated:

- a "cold hit";
- a drug trafficking or criminal enterprise investigation;
- a referral from an informant; or
- a referral from a financial institution.

1. "Cold Hit"

A money laundering investigation may be initiated if a police officer discovers a large quantity of cash upon an individual's person under suspicious circumstances. For example, in a routine traffic check an officer discovers $900,000 in tens and twenties in a hockey bag in the trunk of a car. If the officer deems this to be suspicious, the subject can be arrested, the cash seized and a money laundering investigation may follow.

2. A Drug Trafficking or Enterprise Crime Investigation

All drug trafficking investigations conducted by the RCMP Drug Directorate now incorporate a financial component which investigates both the financing of the drug purchase as well as the laundering of the proceeds.

3. Referral from an Informant

A referral may come from a police informant. A great deal of drug enforcement is informant-oriented, thus, while this type of referral is usually in the context of a suspected drug trafficking or possession offence, police may also receive information about large quantities of cash as a precursor to recognizing enterprise criminals and a enterprise crime offence.

4. Referral from a Financial Institution

Increased sensitivity among financial institutions towards money laundering has resulted in many referrals being made by employees of the institutions of suspicious (cash) transactions conducted by a customer. Prior to the police being notified, the process at the institution level would be as follows: A customer enters a bank and wants to conduct some type of transaction involving $90,000 in tens and twenties. The customer may be asked to complete a "source of funds" form. If the teller remains suspicious, a supervisor would be notified, who in turn alerts the branch manager. After a possible cursory check into the bank records of the client, the Manager notifies the regional security division of the bank.

Further checks are made on the customer including banking records, job, employer, etc. If the security department deems that the case may require criminal investigation, law enforcement will be notified.

B. Development of the Case

The next step of a police investigation initiated by a referral would be to establish all facts as reported by the suspicious parties. This includes speaking with the financial institution or informant and conducting traditional police work to discover as much as possible about the suspect and the circumstances surrounding the suspicious incident.

If the referral came from a financial institution, the officer would begin by making enquiries into the background of the client's accounts and transaction(s) which appear suspicious. For example, if the suspect deposited money into a bank account, they would check all the particulars he/she gave to the bank when opening the account as well as the history of the account.

If the money was wire transferred, an investigation would attempt to enquire into the destination of the funds. If the suspect is transacting in securities, police would enquire into the beneficial ownership of the investments.

This background check is often restricted to examining the documents and records at the bank branches and regional storage facilities. In addition, the investigation may also include contacting federal or provincial government agencies that regulate the respective commercial sector for information and cooperation.

A background check on the suspect is also conducted through the intelligence information resources available to the RCMP. This consists of queries into computer-based systems as Canadian Police Information Centre (CPIC), Occurrence reporting systems such as Police Information Retrieval Systems (PIRS) or organized crime databases such as Automated Criminal Intelligence Information System (ACIIS). Information searched includes prior criminal convictions, outstanding warrants, suspected connections to drug traffickers, etc.

Based upon the information gathered, if the investigating officer, in consultation with a division supervisor or senior officer at Ottawa Headquarters, feels that there is enough evidence that substantiates suspicion of money laundering, the next step may be surveillance of the suspect.

C. Financial and Criminal Investigations

If substantive evidence on the suspect is uncovered in the process of the initial physical surveillance, the investigation may be intensified to include judicially authorized surveillance techniques, such as wire taps and search warrants.[2]

The intensification of surveillance is preceded by consultation between the investigating officer, a superior officer and a junior prosecutor. If evidence has revealed that the laundering operation involves an international component, the investigation may include contacting RCMP liaison officers stationed abroad, communicating directly or utilizing Interpol to communicate with other police forces abroad.

From this point on, evidence gathering revolves around three inter-related objectives:

- establishing the suspect's involvement with a enterprise crime offence;
- linking the suspect with quantities of cash or negotiable instruments (ideally in the process of a cash transaction); and
- establishing a connection between the suspect, the enterprise crime offence and the cash/financial transaction(s). Ostensibly, the objective of the surveillance is to establish that the wealth of the suspect and/or funds in which the suspect transacted,

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[2] Police investigations will be affected by the 1990 Duarte v. The Queen decision that determined "participant surveillance" amounts to a search and seizure within the meaning of the Charter and as such requires that the police obtain an authorization. The time and expense required to prepare the paper work for these electronic surveillance authorizations may reduce the usefulness of informants and undercover work in some police investigations.

> is derived from the proceeds of an enterprise crime or designated drug offence. Ideally, this would involve observing the suspect in the middle of an offence (eg. a drug deal) in which the suspect can be arrested immediately.[3]

The investigation of the suspect involves concurrent designated drug and proceeds of crime investigations. The designated drug investigation continues to revolve around establishing enough evidence to prosecute the suspect under the Narcotics Control Act (R.S.C. 1985, c. N-1).

The objectives of the financial aspect of the investigation involve gathering enough data to argue that all or part of the suspect's wealth constitutes the proceeds of crime, establishing the exact wealth of the suspect and/or the total amount of funds the suspect transacted.

The financial investigation may require large investments of time and manpower, often spread over a period of months, even years, to develop a viable case. Investigators want to be confident that they have detected as much as possible of an illegal money laundering network--a network could potentially involve vast documentation, scores of players at regional, national and/or international levels, and numerous real or fictional corporate entities or financial accounts.

Before and after the arrest of a suspect, a detailed financial analysis is pieced together. This often results in the creation of a flow chart, which demonstrates the flow of funds through different vehicles. The flow chart is used as evidence and as a potential aid in leading to other laundering vehicles and funds which can be seized.

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[3] Even if the suspect has not been connected with an enterprise crime offence, money laundering charges under section 462.31 of the Criminal Code can still be laid. However, without a predicate enterprise crime conviction, a money laundering conviction and forfeiture is more difficult to obtain.

The financial wealth of the suspect, including a detailed description of the assets, is also constructed. This step often includes accessing tax information from Revenue Canada. This tax information is integrated into a net worth analysis, which is used as a basis for the forfeiture of the proceeds of crime.

This analytical step of the investigation often involves the intelligence/analytical sections of the RCMP. In preparing evidence for trial, a forensic accountant may also be used.

D. Prosecution and Forfeiture

Once the suspect is arrested, the investigation continues, incorporating any information surrendered by the suspect. More importantly, however the investigating officer can now utilize legal powers to freeze and/or seize the suspected proceeds of crime. This includes securing from a superior court judge, a special search warrant under subsection 462.32 of the Criminal Code or a restraint order under subsection 462.33 of the Code. Once the property has been seized the Crown has six months to prosecute the suspect. Upon application to a superior court judge this period can be extended for nine months (ss. 462.35).

The evidence gathered by the investigating officer, in particular evidence establishing that the funds seized were the product of an enterprise crime offence, forms the foundation for the prosecution of the proceeds of crime offence (section 462.31) and forfeiture (sections 462.37, 462.38). The financial analysis, including flowcharts, financial statements and net-worth analysis are essential to determining the amount to be forfeited.

Funds can be forfeited in one of two scenarios: (1) the suspect has been convicted or discharged of an enterprise crime or designated drug offence and the court is satisfied **on a balance of probabilities** that the property seized is the proceed of the enterprise crime or designated drug offence (ss. 462.37[1]); (2) the suspect has not been convicted of an enterprise offence or designated drug offence, in which case forfeiture can only be ordered if the court is satisfied **beyond a reasonable doubt** that the property is the proceed of crime (ss. 462.37[2]).

III. STRUCTURE AND ORGANIZATION OF LAW ENFORCEMENT IN CANADA SPECIFIC TO FINANCIAL INVESTIGATIONS

Law Enforcement in Canada is structured into three levels: RCMP Federal police force, provincial police forces (Ontario Provincial Police, the Sûreté du Quebec and the Royal Newfoundland Constabulary) and 390 independent municipal forces. In addition, the RCMP provides provincial policing on contract to eight provinces and two territories and municipal policing is carried out on contract by the RCMP (191 municipalities) and the OPP (16 municipalities).[4]

The Canadian Constitution contains federal-provincial jurisdictional divisions for law enforcement. In the

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[4] Statistics Canada, Canadian Centre for Justice Statistics, Juristat, October 1989, "Policing Expenditures in Canada" and August 1989, "Police Personnel in Canada".

Territories, there is no issue of jurisdiction because the RCMP enforces both Criminal Code and federal statutory offenses as the force of primary jurisdiction. However, in the provinces, the responsibility for the administration of justice rests with the provincial Attorneys General. As a result of this constitutional division of powers, Criminal Code investigations are conducted in the provinces under the authority of the provincial government by either provincial police, municipal police or RCMP on contract. In all cases originating in an urban centre which has its own police force, the city police are the force of local jurisdiction and will conduct most criminal investigations.

The RCMP is responsible for enforcement of federal statutes and are therefore responsible for enforcement under the Food and Drugs Act (R.S.C. 1985, c.F-27, s.1) and the Narcotic Control Act (R.S.C. 1985, c.N-1, s.1). The laundering offence is part of these two statutes as well as applicable to enterprise crime offenses under the Criminal Code (R.S.C. 1985, c. C-46, s. 462.31).

Organizationally within the RCMP, the OPP, and the Metropolitan Toronto Police, there are specific sections designed to carry out financial investigations focusing on proceeds of crime or money laundering.

A. Royal Canadian Mounted Police (RCMP)

The RCMP is Canada's federal police force. With more than 15,000 officers, it provides policing in every province and territory. Yet, despite its national presence and its highly centralized administration, it is highly decentralized operationally.

The RCMP is divided into thirteen relatively autonomous divisions across Canada. The relative autonomy of the division is illustrated by the fact that the Commanding Officer of a division reports directly to the Commissioner of the RCMP and not through the headquarter's hierarchy. This autonomy is, in part, a response to the fact that the "administration of justice" is, by authority of the Canadian Constitution, a provincial responsibility.[5]

Within the RCMP there are twenty-eight investigative units which might conceivably undertake a proceeds of crime investigation. However, in practice this is delegated to specific units; in particular, the Enterprise Crime Unit of the Economic Crime Directorate and the Anti-Drug Profiteering Unit of the Drug Enforcement Directorate.

1. Economic Crime Directorate: Enterprise Crime Unit

The Enterprise Crime Unit was created as a part of the Economic Crime Directorate in January 1990. This unit is charged with investigating proceeds of crime offenses which emanate from enterprise crime offenses.[6] Prior to the formal creation of this unit, Economic Crime members investigated money laundering cases as one component of other economic crime duties.

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[5] The Division boundaries roughly correspond to provincial borders with a few exceptions.

[6] The Proceeds of Crime legislation applies to two general categories of offenses. The first category is the enterprise crime offenses that include such Criminal Code offenses as book-making, theft, forgery, fraudulent manipulation of stock exchange transactions, etc. The second category is that of designated drug offenses which are all indictable offenses under The Narcotics Control Act and The Food and Drug Act.

In general, Economic Crime investigators are mandated to investigate most "white collar" or financially motivated crimes. This includes offenses against corporation and combines legislation, counterfeiting offenses under the Criminal Code, securities offenses under the Criminal Code, income tax offenses, bankruptcy offenses, and computer crime offenses. A 1966 federal/provincial agreement authorized the RCMP to take responsibility for large-scale inter-provincial financial investigations. Likewise, a Memorandum of Understanding with Revenue Canada, authorized the RCMP to work with them on organized crime investigations.

Enterprise Crime investigations are conducted on those commercial crime cases which exhibit the potential for proceeds of crime offenses against the Criminal Code. Each RCMP Division has members dedicated to investigating the proceeds of crime component of enterprise crime offences. In the major urban centres, there are specific Enterprise Crime Units which handle proceeds of crime investigations as their exclusive mandate. In the smaller RCMP detachments, enterprise crime investigations will simply represent one of many duties carried out by members of the division's Economic Crime Directorate. Each unit is primarily responsible for investigations originating within their respective divisions and are also responsible for coordinating their efforts with each police force of the local jurisdiction.

Within the Economic Crime Directorate, there are 33 field divisions across Canada with a total complement of over 450 members. Internal re-allocation of members from the Economic Crime Directorate has provided the Enterprise Crime Unit with 37 members.

2. Anti-Drug Profiteering (ADP) Unit

The creation of the ADP unit in 1981 symbolized both the recognition of the escalating profits derived from the illicit drug trade as well as the RCMP's emphasis on utilizing the technique of anti-profiteering as a means to combat drug trafficking.

As a part of the RCMP Drug Enforcement Directorate, the ADP unit is charged with "tracing drug money flows, identifying and seizing criminally obtained assets through investigation" (RCMP, Drug Enforcement Directorate, 1988, p. 96). Thus, ADP is involved in investigations carried out under the Narcotics Control Act and the Food and Drugs Act within their divisional jurisdiction.

The ADP unit is decentralized with functional units at the divisional level across Canada. The ADP unit at headquarters in Ottawa consists of four officers who support the 26 operational sections nationwide. Fifty-six ADP specialists have been deployed to drug sections in key geographical areas throughout Canada to conduct investigations and provide operational assistance. In addition to the ADP specialists, all RCMP drug investigators stationed at divisions throughout Canada are expected to address the financial aspect of the crime when conducting drug trafficking investigations.

Headquarters, in addition to administering ADP resources, performs a coordination and liaison function at the national level both between divisions and with other law enforcement agencies (eg. Revenue Canada - Customs) as well as coordinating international investigations.

B. Ontario Provincial Police

The Ontario Provincial Police (OPP) provide provincial policing services within Ontario under the direction of the provincial Solicitor General. The OPP is also responsible for policing those municipalities which have not established a municipal policing service. Under its provincial authority, the OPP is responsible for conducting investigations pursuant to the Criminal Code as well as other Ontario provincial legislation such as the Highway Traffic Act and municipal by-laws. Within the OPP, two branches are of particular relevance to proceeds of crimes investigations: the Anti-Rackets Branch and the Drug Enforcement Directorate.

1. OPP Anti-Rackets Branch

The Anti-Rackets Branch is the unit of the OPP charged with the detection and investigation of a wide range of schemes or rackets, organized or otherwise, where patterns of fraud exist (Higley, 1984, pp. 392-393). This broad area of concern has included investigations of confidence tricksters, forgery, utterance, corporate white collar crime (such as real estate and stock market manipulations) as well as the recent addition of hate literature and pornography.

The Anti-Rackets Branch of the OPP is headed by an Inspector and consists of 86 personnel, 76 of whom are in uniform and ten civilians. Within the province, the Anti-Rackets Branch is multi-jurisdictional, conducting investigations throughout the province either independently, or at the request of the force of local jurisdiction. The branch headquarters functions as a support mechanism for police agencies across the province. The objective is for the Anti-Rackets Branch to augment the limited resources of local authorities to conduct complex investigations involving a financial component. This includes proceeds of crime investigations, money laundering and enterprise crime.

2. OPP Drug Enforcement Branch

The Drug Enforcement Branch of the OPP was created in December 1989 and consists of 9 units province-wide with a total complement of 70 personnel--12 of whom are located at Branch Headquarters in Toronto. Branch Headquarters is responsible for providing administrative support, management direction, policy development and liaison with other agencies.

In the province of Ontario, the OPP has the statutory authority to conduct investigations involving the laundering of the proceeds of enterprise crime offenses as defined under section 462.3 of the Criminal Code. However, the investigation of drug offenses fall under federal jurisdiction and therefore is within the mandate of the RCMP. Likewise the offence of "conspiracy" to commit a designated drug offence is within the Criminal Code but is enforced by the RCMP.

Notwithstanding this jurisdictional cleavage, many designated drug investigations, and concomitant proceeds of crime investigations are conducted by the OPP and in Joint Force Operations (JFOs) between RCMP, OPP and municipal drug enforcement units.

While there is no separate anti-drug profiteering unit, the OPP Drug Enforcement Branch has indicated that it will incorporate a financial aspect into designated drug offenses if it is "worthwhile," as defined by the sums of money involved. The Drug Enforcement Branch has also indicated that the provincial Attorneys General is granting permission on an ad hoc basis, for proceeds of crime investigations by this branch and has already received guidance from the Attorneys General office on one particular case.

C. Municipal Policing: Metro Toronto Police Department

The Metro Toronto Police Department (Metro Toronto) has operated a Proceeds of Crime Squad since February, 1990. The squad operates under the direction of a Detective Sergeant who reports to the Officer in Charge of Intelligence and Morality for Metro Toronto.

It is the mandate of this newly created squad to investigate and recommend the laying of money laundering charges, including both enterprise crime and drug cases.[7] To fulfil their mandate in this area, the Proceeds of Crime Squad intends to cooperate extensively with other investigative units of the Metro Toronto Police Force.

As of the writing of this report, the Squad has yet to conduct its own proceeds of crime investigations. However, some of its members are involved in Joint Force Operations involving proceeds of crime elements. The Squad has indicated that it will utilize the new search and seizure provisions under section 462.32 of the Criminal Code. However, seizures will be limited to cash and easily movable assets due to the lack of capacity to manage the variety of assets which might otherwise be subject to seizure.

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[7] Municipalities, such as Toronto, have argued that street crimes are related to drug offenses and, therefore, have justified their enforcement activities in the area of drugs. A drug offence case would likely be prosecuted federally even if it were investigated by the municipal police.

Investigative procedures specific to proceeds of crime offenses have yet to be established, and investigative techniques traditionally followed in Criminal Code investigations will be relied upon.

In addition to Metro Toronto, a cursory survey of ten other municipal and regional police forces from across the country revealed that only one force has created a specific proceeds of crime unit (Edmonton) and a total of four municipal forces have conducted proceeds of crime investigations.

D. Strengths and Weaknesses of Law Enforcement Structure vis à vis Proceeds of Crime Investigations

1. Ability to Conduct Proceeds of Crime Investigations

Proceeds of Crime enforcement has the potential to evolve into a preeminent tool to combat enterprise crime and drug trafficking. Canadian police forces have reacted accordingly by incorporating proceeds of crime elements into traditional criminal investigations and creating units dedicated exclusively to this aspect of law enforcement.

The RCMP has taken the lead in this area of law enforcement. Provincial and municipal forces are also slowly recognizing anti-crime profiteering as an important component to combat enterprise crime offenses, although many are taking a cautious approach to proceeds of crime investigations because the legislation governing this area is so new. This approach ensures that police forces will wait for model cases before venturing into this unknown territory. As one officer put it, "I don't want the legacy of my career to be bad case law".

The reluctance of some municipal forces to conduct proceeds of crime cases reflects perceived impediments inherent within their organizations and, more importantly, from the costs associated with conducting a proceeds of crime investigation. There is often a lack of financial and human resources available to municipal forces to conduct the labour- and capital-intensive proceeds of crime investigation. Thus municipal police forces will find it increasingly difficult to train and dedicate officers for this particular function due to budget restraints.

These constraints are paramount to municipal police forces, when conducting proceeds of crime investigations, especially when viewed in light of the lack of forfeited funds returned to that force. The expenses involved in proceeds of crime investigations have made police forces particularly anxious to receive directly or indirectly some of the assets forfeited as a result of their investigations.

2. Jurisdictional Divisions

The Criminal Code/federal statute jurisdictional demarcations have implications for the effectiveness of Canadian law enforcement to conduct proceeds of crime investigations.

There are numerous examples whereby the RCMP does conduct some Criminal Code investigations either under memoranda of understandings with municipal or provincial police, joint force operations, or related to offenses such as conspiracies. Many of these arrangements are ad hoc and are not supported by any written agreement or policy. Likewise, municipal and provincial police forces are, to varying degrees, involved in drug enforcement. Without a prescribed policy, there is potential for overlap and miscommunication between the forces, since many drug, enterprise crime, and proceeds of crime investigations are inevitably multi-jurisdictional.

Some efforts have been made to address this problem of jurisdictional overlap. One such means is the establishment of formal Joint Force Operations (JFOs) which involve coordinated arrangements between two or more police forces. The objective is to maximize investigational and enforcement capabilities particularly for enterprise crime offenses that tend not to be restricted to any one jurisdiction. In addition to these "formal" JFOs, individual police departments also work together on shorter term specific cases.

Another mechanism for coordinating activities is the "Case Overlap" system used for drug investigations among police forces in Greater Toronto and Southern Ontario. Within this system, a force which initiates a drug investigation agrees to query the subject on the Canadian Police Information Centre (CPIC) to see if other forces are conducting investigations with respect to the same subject. Even if no query is made, the force will enter the subject's "tombstone" data for the benefit of other forces that may query the subject in the future. If it is discovered that the subject is already under investigation by another force, the querying agency agrees to contact the investigating force to enquire into the possibility of a joint investigation.

While "Case Overlap" is not working as well as it might, it is an example of the type of system that could help to link police departments. Unfortunately, these measures are usually confined regionally or to specific police cases and thus do not eliminate the problems inherent with a law enforcement structure that gives rise to inter-force competition.

Even within the RCMP there are jurisdictional overlaps, stemming in part from the relative autonomy of separate directorates and divisions and closely related to competition within the force that is perhaps inherent in law enforcement.

Specifically, there exists the potential for jurisdictional disputes between the RCMP's Anti-Drug Profiteering and Enterprise Crime Units. Prior to 1981, the Commercial Crime Investigations Branch of the RCMP investigated drug profiteering as but one of the economic crimes it was mandated to investigate. With the establishment of the Anti-Drug Profiteering Section, two specialized units are now being used to stem the tide of illicit profits in Canada. While each possess clearly defined and distinguishable mandates, the downward pressure on budgets and upward pressure for tangible results, inexorably places each unit in a competitive position. Competitive relations are especially aggravated by the absence of clear-cut information as to the source of the proceeds of crime around which a particular case revolves. While it is true that these branches cooperate on most occasions, officers have admitted to a certain degree of competition and rivalry which clearly limits the extent of their cooperation, the sharing of information and intelligence, and hence, effectiveness.

3. Coordination of Law Enforcement Priorities and Investigations Across Canada

At times, the decentralized nature of the RCMP may potentially limit the effectiveness of criminal investigations due to a lack of uniformity of priorities across the country. This stems from the autonomous nature of thirteen divisions which may seem at times to operate like thirteen police forces rather than a single force.

The provinces have their own priorities and when the RCMP is operating under contract it is responsible for satisfying provincial policing expectations. While only a few of the provinces actually provide policy direction to the RCMP, it is often the provincial authorities who decide whether a particular case will be prosecuted.

In several of the provinces which contract the RCMP to provide policing services, it is the provincial prosecutor who lays criminal charges stemming from a criminal investigation. Given this power of the province to determine the priority to be given police cases, RCMP policing within that province must reflect these decisions. Other than by policies set out in the RCMP Operational Manual, headquarters, below the level of the Commissioner, cannot dictate that a specific investigation be carried out at the divisional level or that it proceed in a given manner.

IV. PERSONNEL RECRUITMENT, TRAINING, AND EDUCATION

The backbone of any proceeds of crime investigation is the police officer. Because this area of law enforcement requires of the police officer not only basic criminal investigative skills but, as importantly, a capacity to dissect complex financial data, the officer must be carefully selected and highly trained. Essential to acquiring and maintaining high quality for a proceeds of crime investigation is the recruitment, training and education of officers.

A. Royal Canadian Mounted Police (RCMP)

1. Recruitment

Traditionally, the typical RCMP recruit was: a young man, a high school graduate, single, above average height, in good physical health and able to pass extensive screening for personal suitability. This "typical" member is no longer the focus of current recruitment initiatives.

Increasingly, the RCMP has become sensitive to the social and political environment in which recruitment, and hence the personnel composition of the force, is placed. In 1983, in response to government policy on employment equity the RCMP instituted new basic recruitment standards, such that it actively recruited women, visible minorities, aboriginal peoples and applicants with a university education.

These criteria were established on the basis that the force did not reflect the gender, ethnocultural, nor racial make-up of the Canadian population and in the recognition of the fact that changes in police work require a proportion of the members to have a higher level of education. Moreover, in response to the call for a demographically representative organization, the RCMP has attempted to distribute its recruitment geographically to ensure that all Canadians have a fair opportunity to pursue a career with the force.

The RCMP applies a rigorous process of interviews and tests designed to select the most suitable candidates from the thousands that apply each year. As a result, only one out of every twelve candidates who pass the initial screening ever become recruits.

In addition to general selection into the force, due to the very specialized abilities required of financial investigators, the RCMP has established specific selection criteria for members seeking to work in Enterprise Crime or the ADP units.

The preferred candidate for selection as an Commercial Crime, and more specifically, an Enterprise Crime investigator, possesses a diversity of experience in general police duties including criminal prosecution. The most desired qualifications include:

- a demonstrated above average investigative ability;
- an aptitude for handling complex cases;
- a self-starter;
- an interest and ability to communicate effectively with professionals and business executives;
- some post-secondary education and/or a willingness to undertake studies in accounting, business law, and other relevant subjects; and
- an above-average ability to communicate in writing.

The ADP Branch uses slightly different criteria for recruitment. In order to become an Anti-Drug Profiteering investigator, a RCMP member must have several years of active duty with the Drug Enforcement Directorate. This implies that the candidate has met the requirements for the prerequisite experience. The requirements to become a Drug Enforcement investigator are:

- at least two years general duty experience;
- at least one year with the RCMP General Investigative Service or Criminal Intelligence Branch;
- good physical condition;
- ability to make sound judgements in high stress situations;
- highly developed perceptual skills and initiative;
- ability to enforce drug laws and Criminal Code within policy guidelines; and
- a willingness to accept disruption of routine home life.

The selection standards for ADP screen candidates for aptitude. Training and on the job experience are relied upon to provide more specialized skills.

2. Training and Education

Once selected, the RCMP recruit must undergo a battery of training. The process of taking recruits and creating RCMP members is conducted through the RCMP Training Academy in Regina. Recruits undergo an intensive 26 week basic training course, the curriculum of which includes:

- operational training (report writing, first aid, handling of prisoners, etc.);

- identification services (bombs and infernal devices, fingerprints, crime detection laboratories, etc.);
- self-defence; and
- knowledge of the history of the RCMP, law, driver training, firearms, physical training, human relations, multicultural awareness, and human behaviour and police intervention (Canada, RCMP: 1988b, p. 4).

Upon successful completion of basic recruit training, recruits then must take field training at selected training detachments where they are involved in everyday police duties under the supervision of a detachment trainer. The recruit training period is at minimum, one year in length.

In addition to recruit training, there are a variety of ongoing training services provided by the force which are intended to update and/or specialize the skills of the Mountie. It is within this latter category that training for the ADP and Enterprise Crime units are conducted.

Due to the unique application of financial investigations to drug law enforcement, specialized training forms an integral part of the ADP program. Ongoing specialized training is conducted through the Canadian Police College in Ottawa. Courses covering such topics as accounting, net worth analysis, banking procedures, international investigative techniques and legislative procedures are offered to members of the ADP unit. Additional courses dealing with the use of computers in financial investigations and the management of seized assets are currently being finalized (Canada, RCMP, Drug Enforcement Directorate: 1988, p. 97). Finally, a proceeds of crime investigations course, applicable to both designated drug and enterprise crime offenses is planned to be offered at the Canadian police college in

October of 1990.

Historically, the RCMP has shown a preference for ongoing police training over an academic education. For example, assignment to either ADP or the Economic Crime unit requires the attainment of Force minimum standards which equates to a grade twelve education. Selection standards for Economic Crime express a preference, **but not a requirement**, for a university degree or business-oriented courses and ADP selection standards do not list a preference for individuals with higher levels of educational attainment.

The RCMP relies on a combination of aptitude, experience and training to provide its members with the required skills to investigate financial offenses. However, post-secondary education for RCMP members while in the force is increasingly being stressed as an important complement to the training function.

The RCMP encourages members to pursue academic studies part-time and offers incentives such as payment of tuition and books. In addition, a few select members each year are chosen from a list of applicants to attend university full-time at RCMP expense on the condition that the member then serve a predetermined term with the force upon graduation. Many members are also offered the opportunity to take a one year non-degree university program.

Despite the absence of mandatory post-secondary education requirements, the Economic Crime Unit does demonstrate a level of educational attainment higher than the force-wide average, and indeed, higher than the Canadian national average as a whole. As of spring 1990, twenty-six percent of RCMP Economic Crime members had at least one university

degree while fifteen percent had completed at least some university courses. The specialized backgrounds include accounting, law, finance, economics, computer science and business administration. Similar numbers were not available for members of the Enterprise Crime Unit. Due to the movement of members in and out of the Economic Crime and Drug Directorates the exact numbers of members with post-secondary education fluctuates from year to year.
While steps are being taken by the Drug Enforcement Directorate to recruit more members with some post-secondary education, the percentage of ADP members with post-secondary degrees or some post-secondary education is estimated to be approximately half that of the Economic Crime Directorate.

B. Ontario Provincial Police

1. Recruitment

OPP Anti-Racket investigators must have at least five years operational experience and have applied to work in the Anti-Rackets Branch. Staffing is based on demonstrated aptitude, skills and interests. There are no specific educational requirements for the position of Anti-Rackets Investigator.

As with the other units, staffing for Drug Enforcement is based solely on personal suitability and experience (minimum two years). There is a preference for younger officers who are capable of evoking credibility in undercover operations. There is a progression once within the branch from undercover work, through assignment as a cover officer to becoming a case manager.

2. Training and Education

Officers of the Anti-Rackets Branch have engaged in cross-training with members of the OPP Drug Enforcement branch. Most of those selected to the Branch have already passed the Criminal Investigative Techniques and Fraud Investigators courses offered at the provincial police academy in Aylmer, Ontario and have demonstrated a personal or career interest in accounting, business administration or computers.

Continuing training and education are encouraged and many officers take advantage of courses offered at the Canadian Police College in Ottawa and at local colleges or university in addition to those offered in Aylmer. Within the Anti-Rackets Branch, investigators also have the opportunity to enrol in specialized courses relevant to commercial crime, such as the Canadian Securities course.

C. Metro Toronto Police Department

1. Recruitment

Members of the Metro Toronto Proceeds of Crime Squad are "hand-picked" for their experience and specialized education. In particular, the Squad looks for accounting skills when recruiting officers. At present, one member has a degree in Business Administration as well as a real estate brokers' licence.

2. Training and Education

Squad members have participated in a range of training offered by Metro Police Department, the Ontario Police academy and the Canadian Police College, including proceeds of crime courses. In addition, in-house discussions and classes with other forces involved in proceeds of crime investigations are planned for the future.

The Squad is also attempting to have representatives from the federal and/or provincial Attorneys General office conduct lectures about their role and criminal prosecution in general. Several members of the Squad are currently taking accounting courses at Ryerson Polytechnical Institute on a part-time basis.

Other municipal units have indicated varying degrees of training in the area of proceeds of crime investigations. While most have simply attended seminars on the legislation, police forces, such as Calgary, Edmonton, Hamilton-Wentworth have trained officers specifically in the details of proceeds of crime investigations.

D. Analysis: Personnel Recruitment, Training and Education for Proceeds of Crime Enforcement

The complexity of proceeds of crime investigations necessitates that law enforcement recognize that this field demands specialized training and education that will allow the officer to perform diverse law enforcement functions, and operate knowledgeably within several business and financial fields.

A current debate is presently over whether it is better to train an investigator to be an accountant, or an accountant to be a police investigator. At this point, law enforcement has opted for the former approach; officers with traditional criminal investigative experience are recruited and provided with ongoing specialized training suitable to proceeds of crime investigations.

The belief is that most people can be taught basic accounting or business skills but a proficiency in sound investigative skills can only be instilled in an officer through specialized police training, and more importantly through experience. Thus, the "on-the-job" experience gained through financial investigations is emphasized.

Building on the policing experience that the officers receive, ongoing training and education for the anti-crime profiteering officer should incorporate two inter-related components--general skills in business techniques and law, financial accounting, computer skills, etc. followed by courses specific to money laundering.

The general skills are available at most post-secondary institutions. Using these financial and business skills as a foundation, courses specifically dealing with proceeds of crime investigations should be made available through the police community. The curriculum for this course(s) should be based upon specific proceeds of crime cases highlighting:

- specific money laundering scenarios;
- how to apply traditional investigative experience and financial and business skills to these scenarios;
- introducing the officer to the types of financial institutions with which he/she will come in contact; and
- familiarizing the officer with the documents and records available at these institutions which are critical to a proceeds of crime investigation.

This information in part is offered through the Canadian Police College. All specialized courses dealing with money laundering must be regularly updated to match the ever-changing tactics and priorities of money launderers. Thus, while experience is critical to an effective investigator, ongoing training and education is also crucial.

The value of education for investigators has been implicitly accepted in the United States where 100 percent of FBI agents, over 90 percent of DEA agents and over 80 percent of U.S. Customs agents have secondary degrees (many of them in Business or Criminal Justice Colleges and Community Colleges). Investigative experience, technical knowledge and general post-secondary education are not mutually exclusive but complementary.

Finally, and perhaps of most importance, the general analytical capabilities of individual officers must be considered. While experience, and training and education are all essential, some individuals are particularly skilled at tasks that involve critical thinking and analysis.

The days of the "generalist" police officer may be over. As long as promotion procedures require that each upwardly mobile officer must move around within the force to gain a broad base of experience, it will be hard to provide sufficient in-depth expertise to any one group of officers.

V. INVESTIGATIVE TECHNIQUES

Whether it is an enterprise crime or designated drug offence, a concurrent proceeds of crime investigation requires the application of white-collar investigative techniques, in addition to more traditional criminal investigative techniques, such as physical and electronic surveillance. Because many police forces have existing expertise in the area of financial investigative techniques for white collar crimes, these investigators have an essential base of expertise required for carrying out proceeds of crime investigations.

Karchmer (1988) discusses the types of investigative techniques that may be enlisted in laundering investigations and the types of schemes against which each might be most appropriate:

A. Financial Auditing and Accounting

It is essential that police forces sustain a capability to both track financial and ownership patterns and employ investigative accounting techniques to document discrepancies between the amounts of money and other assets actually accumulated by suspects and the amounts generated through legitimate means (Karchmer, 1988, p. 54).

B. Undercover Operations

Many (United States) federal money laundering prosecutions against money laundering have developed from the use of undercover personnel to pose as either criminals in search of laundering services, or launderers willing to exchange the money of criminals. As variations on "Sting" operations, this approach has been relatively successful. However, it is both extremely time-consuming (in terms of time to build trust relationships) and a rapacious devourer of limited agency resources (Karchmer, 1988, p. 55).

C. Surveillance

Two types of surveillance are used for proceeds of crime investigations: electronic surveillance and physical surveillance.

1. Electronic Surveillance

Court-authorized electronic surveillance, and especially telephone interceptions, are one of the most potentially effective techniques in laundering investigations. In many fairly sophisticated operations, laundering transactions are routinely planned and executed through telephone communications, because of the relationship of trust that has been built up over time between criminals and launderers. Intercepts of such communications may provide important laundering details such as amounts involved, dates and times of fund transfers, specific financial institutions involved in both the origin and destination of funds, etc. (Karchmer, 1988, p. 55).

2. Physical Surveillance

The physical surveillance of a suspect is important for proceeds of crime investigations. While often time-consuming and human resource intensive, physical surveillance is fruitful because it may reveal the institutions used as laundering vehicles, liaison between criminal and a launderer and both laundering and criminal activities. Within Canada, physical surveillance is often crucial due to the restriction on obtaining authorization for electronic surveillance.

Traditionally, intelligence gathering by law enforcement has been geared exclusively towards the enterprise crime or drug offence. Proceeds of crime and money laundering offenses necessitate that the information gathering must now target financial transactions of criminals. This can be done in two ways:

- adapting existing intelligence programs to incorporate proceeds of crime information; or
- developing laundering intelligence programs.

In practice, both are necessary. Existing information and intelligence systems and techniques can be directed toward proceeds and laundering cases. Likewise, police forces can become more aware of the points at which they can detect and monitor activities unique to laundering offenses. For example:

- establishing surveillance outside a foreign currency exchange houses;
- monitoring the suspicious transaction reports from financial institutions; or
- setting up a store-front operation, such as a currency exchange houses, to identify launderers.

While police cases show that the financial and commercial transactions available to the launderer are extensive, cases also demonstrate that there are some points of convergence where launderers or those who facilitate laundering must interact.

These points are limited and identifiable. Police information for the creation of laundering intelligence must be collected at the points where illicit cash enters into the legitimate economy. However, this kind of intelligence program demands the involvement and cooperation of the regulatory bodies and professional organizations outside of law enforcement sectors.

VI. INTELLIGENCE GATHERING, RETRIEVAL AND ANALYSIS

There is a well-documented and widely accepted need for police authorities to develop sophisticated systems to collect, and analyze intelligence information for the policing of organized crime (Dintino and Martens 1983). This observation is even more true with respect to the highly complex and technical field of money laundering investigation. As Karchmer states:

> "the individual and collective steps that make up the laundering process are prime candidates for intelligence collection and analysis" (1988, p. 49).

In addition to the information gathered using fairly traditional policing strategies, law enforcement has increasingly recognized the importance of establishing a sophisticated computerized information gathering and analysis system for the development of police intelligence. These computerized systems can be applied to both on-going investigations as well as to long term strategic resource planning and management.

Computer systems are particularly essential with the myriad of information needed for a proceeds of crime investigation. The two critical elements of the information systems as they apply to proceeds of crime investigations include the retrieval function (computer-based information systems) and the analysis function (conducted by computer and human resources).

At present, there are hundreds of computer-based information systems available to law enforcement and these databases range widely in the comprehensiveness of information retained. Fragmentation and a lack of coordination characterize the state of information systems and intelligence in Canada.

A. Royal Canadian Mounted Police (RCMP)

1. Computer-based Systems

The RCMP operates a myriad of computerized information systems. The following represent only a sample of the computerized systems utilized by the RCMP.

i. Canadian Police Information Centre (CPIC)

Operational since 1972, the CPIC is an integrated, automated system which provides tactical information on crimes and criminals. This computer-based police information system provides access to police forces across Canada.

ii. The Police Information Retrieval System (PIRS)

PIRS is a computerized occurrence reporting system which replaced the outdated manual occurrence reporting system. Any crime which has been reported to the RCMP or a participating police force is entered on PIRS.

iii. The National Automated Drug Intelligence Program

The National Automated Drug Intelligence Program is an initiative within the R.C.M.P. aimed at promoting information collection and analysis for use by drug enforcement officers, both federally and nationally. The majority of information processed and analyzed under the NADIP comes from the PIRS system.

This program is potentially significant through its ability to promote awareness of the importance of collecting and analyzing proceeds of crime information arising out of designated drug investigations.

iv. Automated Criminal Intelligence Information System (ACIIS)

The ACIIS was adopted in 1978 as the national criminal intelligence data bank specifically geared towards organized criminal activities.

v. Project Focus

Project Focus is a database containing information on motorcycle gangs in Canada. Police cases reveal that motorcycle gangs are a significant source of illicit drugs in Canada and have laundered their proceeds through business and financial institutions. Like ACIIS, this database has great potential in facilitating proceeds of crime investigations.

vi. GSB Fraudulent Document Database

The General Services Branch of the RCMP maintains a database for fraudulent documents. Exhibits such as forged cheques, hold-up notes, etc. received from police forces are searched against this database in an effort to identify the author through handwriting comparison.

This database may be useful for proceeds of crime investigations if expanded to include the types of documents used in conjunction with laundering vehicles and laundering operations in general, such as customer registration cards at banks or brokerage firms, cancelled cheques or other monetary instruments, etc.

vii. Comparative Analysis and Resourcing System (CARS)

CARS is geographic-based information software designed specifically as an analytical tool for police management. The system draws upon summary data from financial, operational, personnel, demographic, and geographic based files. It provides a capability to track police occurrences across geography (maps) for detailed assessment of police programs.

2. (RCMP) Information Analysis Infrastructure and Support Personnel

In addition to the computerized databases, crucial support mechanisms for the RCMP investigating officers include the personnel who provide the technical expertise and assistance to police officers.

While exact job responsibilities vary, these analysts are directed towards two functions: first, coordinating and analyzing information derived from the computer-based information system, and second, analyzing information gathered from the actual investigation. Both of these functions are critical to the proceeds of crime investigation and as such, the role of the analyst in facilitating these investigations cannot be overemphasized.

Within the RCMP, The National Crime Intelligence Branch, (Divisional Criminal Analysis Sections), The Strategic Intelligence Branch (Drug Enforcement Directorate), and The General Services Branch provide the structure within which the intelligence information is gathered and/or analyzed. In addition, the Criminal Intelligence Service Canada, which is a service for all Canadian Police forces, is integral to this function.

i. National Crime Intelligence Branch (NCIB)

The NCIB is the RCMP branch mandated to gather, correlate and disseminate criminal intelligence information relative to organized crime on a national basis. The NCIB is decentralized throughout all RCMP field divisions. In these field divisions, special sections called Division Criminal Information Analytical Sections (DCAS), analyze and interpret the flow of information in an active investigation.

There may be as few as one and as many as six police officers acting as analysts within each DCAS. Tactical analysis in support of ongoing operations and investigations is extended, along with analysis of trends in organized criminal activity to aid management in resource and strategic enforcement planning.

Because of the complexity of money laundering investigations, these sections are particularly helpful and have been used in such capacities as drawing flowcharts of illicit funds and net worth analyses of criminal enterprises.

ii. Drug Enforcement Strategic Intelligence Branch

The Drug Enforcement Directorate operates its own tactical and strategic intelligence operations. The Strategic Intelligence Branch conducts long-term intelligence information collection, analysis and dissemination. This branch publishes the National Drug Intelligence Estimates every year which incorporates information on the flow of drug money, domestically and internationally.

iii.General Services Branch (GSB)

The GSB provides criminal records, fingerprints, photographs and other information to law enforcement agencies 24 hours a day. Most significantly for proceeds of crime investigations, it obtains criminal records from foreign countries when required by Canadian police forces. GSB also maintains a database for fraudulent documents which, as mentioned previously, may be potentially relevant to proceeds of crime investigations.

iv. Informatics Directorate

The Informatics Directorate is the central unit of the RCMP which attempts to coordinate all computer-based information systems. This includes maintaining the RCMP mainframes, systems analysis and programming, telecommunications, computer networking and records management.

v. Criminal Intelligence Service Canada (CISC)

There has long been recognition by federal, provincial and municipal officials that a successful strategy for combatting organized crime requires cooperation that transcends jurisdictions and extends nationally. The

Criminal Intelligence Service Canada (CISC) was founded at a federal/provincial conference of Attorneys General in the late 1960s to address this concern. Its constitution was adopted in 1970, formally establishing a criminal intelligence organization involving all three levels of government as partners in the crime intelligence process.

CISC was intended to be the "network" through which criminal intelligence units of most major police agencies come together for the common purpose of fighting the spread of organized crime (CISC Central Bureau 1989, p. i).

CISC's voluntary membership includes more than 80 provincial, regional and municipal police departments (Canadian Association of Chiefs of Police 1989, p. ix). Member agencies gather criminal intelligence within their jurisdictions and submit material to one of nine bureaus across Canada for analysis and dissemination to CISC.

Material which has a national interest is supplied to the Central Bureau in Ottawa where a master index is maintained. The system enables a direct exchange of information between law enforcement agencies, provincial repositories and the Central Bureau.

Based upon their mandate, the CISC has undertaken several initiatives to help coordinate intelligence efforts. One of the initiatives is a feasibility study of a national `Case Overlap' system which is based upon a system used in southern Ontario for drug investigations. The expanded case overlap system being considered by the CISC study group would not necessarily be restricted to drug offenses.

At the present time, there have been no initiatives devoted exclusively towards the proceeds of crime as an aspect of organized crime, however, CISC has indicated that this issue will be addressed in the near future.

B. Provincial Intelligence Gathering and Analysis

Within their Criminal Intelligence Branch, the OPP manages the Criminal Intelligence Service Ontario (CISO), a provincial bureau of the Criminal Intelligence Service Canada. Through this function, the OPP fulfils its responsibility for the coordination of organized crime intelligence collection and analysis in Ontario. As a member of the CISC, the OPP has access to organized crime databases such as ACIIS and Project Focus.

Both as a member and manager of CISO, and in support of exclusive force interests, the Intelligence Branch of the OPP has seven officers dedicated to intelligence analysis. These officers provide tactical intelligence in support of OPP and joint force initiatives, and produce strategic analysis in selected areas of attention, as priorities and changing needs dictate.

The OPP also relies on established and informal liaison and Joint Force Operations (JFO) relationships with other regional and municipal police forces operating in Ontario to obtain and share crime intelligence.

C. Metro Toronto Intelligence Bureau

As is typical of most major urban police forces, the majority of crime intelligence in Metro Toronto is collected and processed by a central bureau, in cooperation with enforcement sectors within the force. The Metro Toronto Intelligence Bureau maintains a central crime intelligence data bank, and provides tactical and strategic intelligence support to enforcement personnel, and to management. Both civilian and police analysts are utilized.

Joint Force Operations (JFOs) are an important source of crime intelligence, as well as a mechanism for intelligence sharing between Metro Toronto and other police agencies. A JFO involving the RCMP and the Metro Toronto was recently initiated. The initiative will focus its efforts on investigating assets believed to have been gained through enterprise or drug-related crime, and is oriented to securing prosecutions under the new Proceeds of Crime legislation. Metro Toronto is also actively involved in CISO.

D. Summary: Information Retrieval and Analysis

It is clear that many Canadian and foreign criminal organisations operate nationally in Canada. Within such a context, no police force can realistically attempt to tackle the issue of enterprise crime in the absence of a coordinated national intelligence information infrastructure.

But in spite of persistent efforts by governmental and police officials to facilitate effective intelligence sharing arrangements among the different levels of law enforcement, including the creation of CISC, the crime intelligence process in Canada remains generally fragmented and compartmentalized.

Throughout Canada, there are literally thousands of different databases developed by individual police forces--with hundreds of these devoted to police intelligence. There are few mechanisms in place which provide interaction or cross referencing; nor is there a nationwide uniform crime reporting system that involves all levels of Canadian law enforcement.

This lack of uniformity and shared systems is especially debilitating for proceeds of crime investigations which are very often multi-jurisdictional. Those databases which have been developed to provide national intelligence information, such as ACIIS, are not being used as originally intended, do not interface with other major police information systems, are not user friendly and are cumbersome to manipulate (CISC, pp. 12-14).

A report, titled Data Elements Standard For Police Information Systems,[8] indicates that many police forces have data elements of great relevance to proceeds of crime investigations. However, this report also implies that there exist problems with these "proceeds of crime" data elements:

- they are rarely utilized in occurrence reports of enterprise crime and designated drug offenses;

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[8] Canadian Association of Chiefs of Police, publication prepared by Digi-Plus Inc. for the Ministry of the Solicitor General Canada, November 1989.

- there is no standard data elements system throughout all Canadian police forces;
- they are presently geared for statistical reports and not intelligence information databases; and
- many investigating officers are unaware that such data exist and if they are aware it is difficult to find the appropriate database.

Issues such as provincial control of intelligence standards, and the application of intelligence analysis to police operations, must be addressed if a crime intelligence centre of truly national relevance is to be developed. Political will is essential to remedy the practical and organizational shortcomings that frustrate effective integration of proceeds of crime data into the policing of organized crime in Canada.

In short, there exists little uniformity concerning intelligence information sharing within and between Canadian police forces. The efforts to coordinate a national intelligence information coordination structure, as is the case with the law enforcement structure in general, has continued to meet significant obstacles. As such, within the labyrinth of systems, there exist serious deficiencies in information gathering, dissemination and analysis which will continue to hamper the efforts of Canadian law enforcement in combatting enterprise crime.

Despite these weaknesses, the potential for the type of integrated response necessary to piece together the often myriad pieces of sophisticated laundering schemes exists. The goal would be for all forces to incorporate proceeds of crime investigations into enterprise crime and drug cases and input all proceeds of crime information into a national proceeds of crime database which utilizes uniform variables for all police forces.

The power of computers to facilitate law enforcement's active investigations and long-term strategic planning cannot be overemphasized. This much has been recognized by Canadian police forces, however the response has been fragmented.

The computer-based information systems most relevant to the proceeds of crime are general criminal databases, such as CPIC, PIRS, and databases dedicated to organized crime such as ACIIS. However, these traditional sources of criminal intelligence information are left wanting in their ability to provide the maximum amount of potentially available and valuable information relevant for proceeds of crime offenses.

Existing organized crime databases, such as ACIIS must incorporate specific information on proceeds of crime or new databases created devoted exclusive to this area. This would involve all information of relevance to anti-crime profiteering, for example:

- identification of individuals convicted under a designated drug offence or enterprise crime offence;
- previous convictions/forfeitures under Bill C-61;
- suspected members of criminal enterprises;
- known acquaintance of drug traffickers; and
- bank account numbers, company name of a broker or agent, registered owner of a security, known laundering methods used by suspected or convicted individuals, net worth of suspected or convicted individuals, etc.

Information regarding proceeds of crime must also involve strategic, long-term trend analysis. In the face of tighter security precautions by financial institutions, money launderers will continue to adjust their practices to find new and more imaginative ways in which they can launder the proceeds of their criminal activities. Law enforcement must be able to track the schematic, sectoral and geographical trends that will continue to evolve in this field.

Optimally, the CISC should target proceeds of crime as a significant area of concern and undertake the establishment of a general standard of proceeds of crime information that can be imputed and accessed by police forces across Canada. Proceeds of crime investigations revolve around the establishment of a connection between assets and a criminal figure. Moreover, the investigation must identify as much of the assets owned by a criminal as possible. Thus, information sources must be able to:

- provide information on an enterprise crime or designated drug offence and the criminal;
- trace illicit capital from the criminal enterprise to all laundering vehicles; and
- provide an exhaustive inventory of assets so that a net-worth analysis can be conducted and forfeiture performed.

In order to supplement these existing information sources, law enforcement requires:

- the development of a catalogue of variables relevant to proceeds of crime offenses which would be operational on existing databases or dedicated to an exclusive proceeds of crime database; and
- access to external databases not normally used by law enforcement.

There are numerous informational sources which can supplement the traditional computerized databases accessed by law enforcement in a proceeds of crime investigation. Law enforcement may benefit from looking beyond traditional data sources in the course of their investigations.

There exists numerous databases which are available commercially through private sector firms and which can be accessed on-line by a subscriber for a fee. The extent of information contained on individual databases available to the general public is extensive. In particular, there are extensive databases on Canadian companies, including: names of companies, addresses, phone numbers, executives and directors, sales, net worth, etc. As companies are often used as laundering vehicles corporate databases can potentially reveal significant information.

Many of the government agencies that regulate industries used as laundering vehicles have developed databases specific to each industry. Most of these databases simply cover companies and professionals registered in the industry. However, the databases utilized by some industry regulatory bodies, such as stock exchanges, are much more comprehensive.

Industries and regulatory bodies which have developed information retrieval systems include:

- securities (securities commissions, stock exchanges);
- motor vehicles (motor vehicle registration offices);
- real estate (land registry offices and real estate and mortgage-brokers registration offices);
- businesses (corporate registry offices); and
- banking (federal and provincial superintendents of

financial institutions).

Because the majority of the RCMP's computer systems operate from a mainframe, there is little on-line access to external databases. In addition, accessing regulatory databases either directly or, more probably, indirectly will potentially be difficult due to the confidential nature of information claimed by the source.

However, the capacity for regulatory bodies to collect and disseminate information for their respective sector may be useful to combatting the infiltration of illicit proceeds and other criminal and regulatory violations.

To conclude, there must be more research conducted into the existing law enforcement computer-based intelligence information systems and their applicability to facilitating proceeds of crime investigations and strategic long-term analysis. Law enforcement can no longer afford to develop separate, stand-alone systems that duplicate the services offered by existing systems. Intelligence must be seen to be corporate property to be shared, to the extent possible, among enforcement agencies.

VII. THE USE OF SPECIALISTS IN COMPLEX PROCEEDS INVESTIGATIONS

A. Development of a Analytical Capability

At the simplest level, the analyst is the person who is responsible for turning "information" into "intelligence." Because of the myriad of information available and its decentralized nature, the analyst must be able to know exactly the type of information needed for a proceeds of crime investigation and know where it can be located on the available databases and conversely, how to input data into the systems. Further, analysts are responsible for taking evidence and information discovered in an investigation and manipulating it so it is useful for the investigating officer and subsequent criminal trial.

Most crime intelligence analysis in Canada are undertaken by police officers, who move into the crime intelligence field as one step in their career path, and who must be specially trained as crime analysts. In addition, civilian specialists who possess the academic background, research and technical abilities necessary for intelligence analysis are utilized.
Whether to use civilians or police members is still debated and research must attempt to determine which model works best to achieve a well-functioning analytical unit. Employing trained civilians in this capacity reduces the need for a constant process of training and retraining new members as they are recruited into and out of the intelligence units. On the other hand, the analyst must have the trust and acceptance of police officers and management who provide the raw information. Within some police departments, it would be difficult or impossible for civilian analysts to establish this working relationship.

A cyclical process can serve to undermine the maintenance of an analytical capability. Without the confidence and support of an imaginative manager, the analytical unit is not granted the credibility to prove that it is in fact useful. As a result, the officers will not supply the analysts with the information they require to do their jobs. The result will be that the analytical unit is not able to serve the police officers.

The financial nature of money laundering necessitates that the analysts have training in not only general crime analysis techniques, but also the specialized techniques required for proceeds of crime investigations. This begins with training and experience in computer-based accounting techniques.

In addition, many proceeds of crime investigations utilize three important tools to help analyze the complex trail of laundering vehicles and provide evidence for forfeiture. It is essential that all divisions maintain analysts who can do the functional tasks of constructing:

- proceeds of crime flow charts displaying the flow of illicit funds from the criminal enterprise to the laundering vehicle;
- asset hierarchies that document all laundering vehicles used by the criminal launderer; and
- net worth analysis which compares the legitimate worth of an individual to the actual worth--the difference between these sums likely being proceeds of criminal activity.

However, in addition to these technical tasks, the analyst has the important responsibility of objectively analyzing the material without being narrowly involved with any one aspect of the potential cases. As Dintino and Martens state, the analyst must:

> "look beyond the simple and mundane "facts" of "making a criminal case" and extrapolate from this data a broader understanding of the phenomenon or activity in question. Deriving strategic intelligence data from individual, discrete cases and applying economic, sociological, psychological, and political models to the "facts" expands the alternatives open to

> administrators in their quest to develop coherent and rational policy." (Dintino and Martens, 1983, p.100)

Management must commit itself to the idea of creating and sustaining an analytical unit that will have the support and freedom to serve the police. Police now recognize that "full enforcement" is not possible, and likely not even desirable. Selective enforcement, particularly in an area where the investigations are so resource intensive, is the reality. However, pragmatic decisions regarding enforcement priorities must be predicated upon sound knowledge of the "problem" rather than a series of ad hoc responses to "crises."

B. Utilization of Forensic Accountants

Often the complex financial nature of the laundering scheme transcends the expertise of the investigating officer and resident crime analysts. It is at this juncture that forensic accountants are used.

The employment of forensic accountants by law enforcement revolves around three functions:

- in active investigations to analyze the financial documentation and facilitate the building of a case and the laying of charges;
- to prepare evidence for court; and
- to provide impartial, expert testimony during court cases.

1. RCMP

While the RCMP utilizes forensic accountants in proceeds of crime cases, they do not maintain in-house forensic accounting units for the following reasons:

- in most cases, it is less costly to employ accountants on a contractual case-by-case basis;
- it is important that the testimony of a forensic accountant be impartial (ie. not a member of a police force); and
- there is a belief that a good police officer can conduct any type of investigation, and it is not necessarily beneficial to have accountants on staff.

Therefore, the RCMP hires forensic accountants on a case-by-case basis and provides some of the investigators with accounting training.

As a policy, the ADP recommends that investigating officers use the services of a forensic accountant to help prepare and present a case for trial and, where needed, to provide expert, independent opinion. This policy, however, is subject to the merit and the need of each individual case.

2. Ontario Provincial Police

Two accountants are hired in-house on contract to assist with the investigations of the Anti-Rackets Branch. The OPP Anti-Rackets Division has a $650,000 forensic accounting budget, and accountants are used in 75 percent of all cases (Christopherson, 1989).

3. Metro Toronto Police Force

In 1989, the Metro Toronto Police Force had a small budget for the hiring of forensic accountants on contract. As in other police forces, forensic accountants are used in order to present evidence and give expert testimony in court. The expense of this service remains a problem for Metro Toronto as it does with many police departments.

4. Summary: Law Enforcement and Forensic Accountants

Whether maintained in-house or on a case-to-case contractual basis, forensic accountants constitute a central analytical tool in facilitating investigations and forfeitures of the proceeds of crime.

However, there are two factors which indicate that the employment of forensic accountants by law enforcement may be limited. As officers accumulate training and experience in the financial aspects of anti-crime profiteering, there may be an inclination to discount the importance of forensic accountants. In addition, the cost of utilizing professional accounting firms limits the desirability of their services. As a result, there is a tendency by Canadian law enforcement to utilize private accounting firms with forensic accounting expertise only at the end of an investigation to prepare court evidence.

Whether this approach under-utilizes the potential of the forensic accountant cannot be addressed here. However, the potential that significant information has been omitted or missed in an investigation as a result of not using an accountant earlier in the process is always present.

The effectiveness of the forensic accountant is an open question and to date there are widely varying opinions. What this subjective debate requires, however, is an objective analysis incorporating a scientific approach to estimating the effectiveness of the forensic accountant within the context of a proceeds of crime investigation. A comparative analysis of cases involving forensic accountants and cases which do not must be made, including factors such as success ratio in prosecuting and forfeiture, the cost and length of investigations, and the completeness of information gathered and analyzed.

VIII. INTERDEPARTMENTAL INTERACTION AND COOPERATION

A. Role of Revenue Canada in Proceeds Investigations

Proceeds of crime investigations involve two crucial components which necessitate interaction and involvement with the Federal Department of Revenue. First, because forfeiture is concerned with the earnings and accumulated wealth of a suspect, interaction and cooperation with Revenue Canada, Taxation (RC-T) is essential. Second, because money laundering often involves transborder movements of illicit money, cooperation with Revenue Canada, Customs and Excise (RC-CE) is also vital.[9]

1. RCMP

The RCMP maintains regular contact with Revenue Canada. This has traditionally been in relation to investigating infractions against the Income Tax Act, but has increasingly involved the issue of proceeds of crime.

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[9] For additional information, see Chapter Seven: Money Laundering - An International Perspective.

The functional relationship between RC-T special investigators and those RCMP members specifically assigned to the special tax enforcement program against "enterprise crime" necessarily involves cooperation of investigations. Once RC-T has specifically identified a "tax interest" on persons suspected of organized criminal activities, the RC-T "special investigator" has discretion to decide the extent to which such cooperation is warranted.

While the relations between the RCMP and RC-T have been productive, the RCMP's relationship with RC-T's sister organization Revenue Canada, Customs and Excise (Canada Customs) has not always been so amicable.

The RCMP and Canada Customes have shared responsibility for transborder criminal activity since an April 1932 Order-in-Council which divided responsibility between National Revenue and the RCMP. At that time, audit investigations were the responsibility of customs, while the "detection and seizure of smuggled goods" and assistance in "the apprehension and prosecution of offenders" as well as border patrol duties were to be carried out by the RCMP.

While the respective roles of the two departments have evolved since that time, the evolution has not been entirely without disagreement. The respective roles of these departments are especially relevant to money laundering given the finding that as much as 80% of laundering cases have an international component.

An apparent lack of clarity about their respective roles has led to a series of historical developments whereby one or the other organization, in adapting to changing environments has, in the view of the other, overstepped its jurisdiction.

The result is an environment which is antithetical to cooperative and coordinated enforcement efforts.

Whenever two agencies work in the same area some duplication of effort and conflict regarding enforcement strategies will be realized and some of the tension might in fact be productive. It is the task of the policy makers and management to minimize these effects and to promote productive interactions. The establishment and maintenance of productive ties between federal agencies is essential to the effective conduct of investigations targeting drug interdiction and proceeds of crime enforcement.

Those working in the field across Canada, whether it is law enforcement or customs enforcement, are actively working out arrangements that facilitate a better coordinated effort between the departments. At the divisional level, numerous operational memorandum of understandings have been negotiated between the RCMP and Canada Customs. These operational level agreements have focused on clarifying matters such as the division of responsibilities and the sharing of information.

It should be noted that the federal government has recognized the interest of all federal enforcement agencies in maintaining productive working relations. The Interdepartmental Committee of Law Enforcement Managers (ICLEM) was formed as but one of the initiatives of the Federal Law Enforcement Under Review Secretariat (FLEUR) to *inter alia* improve relations and thereby promote information sharing between the various federal agencies which engage in enforcement activities.

2. Ontario Provincial Police

Because of the confidentiality rules of the RC-T, cooperation between RC-T and the OPP is one-sided and the flow of information is one-way. In other words, Anti-Rackets Branch advises RC-T of relevant tax information it has discovered in the course of an investigation but it has traditionally been difficult for the OPP to receive information from RC-T.

Anti-Racket Branch's interaction with Canada Customs is primarily located in the area of hate literature. There is also some minimal communication regarding fraud.

3. Metro Toronto

The Proceeds of Crime Squad works closely with RC-T. While the flow of information has also been one-way, the Squad intends to utilize the access to information provisions of the proceeds of crime legislation as soon as the opportunity arises. At present, the Proceeds of Crime Squad has not had reason to work with Canada Customs.

B. Cooperation/Interaction with Regulatory Bodies

The government and industry bodies which regulate the industries used as laundering vehicles constitute a crucial medium to facilitate proceeds of crime investigations. As such, the interaction and cooperation between law enforcement and these bodies is important.

1. RCMP

The utilization of regulatory bodies varies with the respective Division and investigating officer. In general, the RCMP maintains a cooperative relationship with these bodies and informs them of active investigations within their fields as well as occasionally asking for assistance in investigations and information collection.

Despite this cooperation, officials with some regulatory bodies have commented that the cooperation is generally one way: the RCMP will often ask for assistance when they need it but fail to keep the regulatory body informed of criminal investigations in their sectors of regulation.

Likewise, financial institutions such as the banks would like more information back from the RCMP as a follow-up to the "suspicious transaction" reports that the banks hand to the police. In many cases the banks are not told whether their information leads to a police investigation, and if so, what the outcome was. A concern is that the banks pass this information to the police, who in turn fail to give it a priority due to limited policing resources.

The securities industry would serve as an example where the RCMP works particularly close with industry regulators. The RCMP has created a special Market and Securities Unit to focus specifically on this area. If law enforcement is to seek the cooperation of the regulatory agencies, the regulators must have confidence that their enforcement concerns and suspicious transactions will be given police attention when appropriate.

2. Ontario Provincial Police

The Anti-Rackets Branch works closely with regulatory bodies in the province through joint operations and personnel exchanges. Investigators from the Anti-Rackets Branch have recently worked with the provincial Ministry of Financial Institutions to investigate the collapse of a large financial interest in the province.

The Anti-Rackets Branch is involved in an exchange program with the Ontario Securities Commission, the regulatory body which polices the securities industry in the province. Future exchanges with the Ontario Racing Commission and the Social Gaming Section of the Ministry of Consumer and Commercial Relations are also being contemplated.

3. Metro Toronto

Because of the lack of experience in this area, the Proceeds of Crime Squad expects to rely upon any help offered by regulatory bodies.

4. Summary: Law Enforcement and Regulatory Bodies

The relationship between law enforcement and regulatory bodies varies with the police force and with the regulatory body. In general, in the absence of a clearly defined relationship, cooperation is usually ad hoc and on an informal basis.

This is especially apparent with the RCMP. While a strong working relationship with many sectors of the business and financial community has been cultivated, there exist no formal policies regarding their relationship and cooperation with regulatory bodies in investigations and information gathering. As such the potential effectiveness of these bodies to combat money laundering is limited.

Through their compliance function, regulatory bodies can be active in ensuring that the private sector has mechanisms to detect suspicious activity. Moreover, the regulatory body itself can incorporate measures to detect illicit funds. Further, the increased awareness and education of the private sector will undoubtedly result in a greater number of referrals to the police - a number which current resources will not be able to handle. Thus, the investigative capacity of the regulatory body can be used to help screen out referrals which do not involve criminal infractions.

In short, within the parameters of the individual sectors used as laundering vehicles, a more structural relationship must be erected between law enforcement, the private sector and regulatory bodies. This relationship must go beyond the predominately reactive interaction during criminal investigations. A tripartite relationship must be formed between these three bodies most crucial to combatting money laundering and as much emphasis must be placed on proactive measures to combat money laundering as there is on reactive measures.

IX. LEGAL POWERS FOR PROCEEDS OF CRIME INVESTIGATIONS AND ASSET FORFEITURE

Prior to 1989, the legal powers of law enforcement to combat enterprise criminal activities through anti-crime profiteering were limited. Technically, money laundering was not a criminal offence and efforts to seize and forfeit the proceeds of crime was limited to section 312 of the Criminal Code which prohibited the possession in Canada of:

> "...any property or thing or any proceeds of any property or thing... (Knowingly)... obtained by or derived directly or indirectly... " from the commission of an indictable offence in Canada or of a similar offence abroad (R.S.C., 1985).

However, this section was primarily concerned with the possession of stolen property. The limitations of these powers to seize and forfeit the proceeds of crime was demonstrated in a 1985 Supreme Court decision which denied the RCMP the power to seize over $400,000 (US) of drug profits contained in a Canadian bank account. The rational given was that the definition of this section was not broad enough to allow for the seizure of proceeds held in intangible form, such as a bank account credit[10].

A. Bill C-61: The Proceeds of Crime Act

The enactment of the initiatives contained in Bill C-61 (S.C. 1989, c. 51) was an effort to address the deficiencies in the Criminal Code.[11] As Mosley (1989) describes the Act:

> "The basic scheme of the Act is the creation of a new part of the Criminal Code with complementary and consequential amendments to the Narcotic Control Act,

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[10] Royal Bank of Canada v. Bourque et al [1984] 38 C.R. (3d) 363.

[11] For a comprehensive analysis of Bill C-61 see: Alan D. Gold's The Proceeds of Crime: A Manual with Commentary of Bill C-61. Toronto: Carswell, 1989.

Food and Drug Act, Income Tax Act.[12] This approach provides a single regime for the application of the new powers and prosecutes enacted to both the Criminal Code and drug offenses."

The amendments provide for:

- two new judicial orders to facilitate the pre-trial seizure of assets suspected of being the proceeds of crime--"Special Search Warrants" for the seizure of movable property, and "restraint orders" for the freezing of immovable assets such as real estate. (Bowie, "Asset Management..." 1989 P.2);
- expanded definition of proceeds of crime to include "any property, benefit or advantage ..." to avoid the problems caused by a proceeds definition that excludes "intangible assets";
- creation of a new money laundering offence;
- a specific statutory protection for disclosures to the police for bankers and others who are in a confidential relationship with customers.

  The protection applies to disclosure of any facts where the person reasonably suspects that any property is the proceeds of crime or that any person has committed or is about to commit an enterprise crime or designated drug offence (Mosley, 1989, p.23);
- disclosure to a senior court of information held by a tax department, on application of the Attorneys General, where it will substantially benefit an investigation of a designated drug offence or related proceeds offence (Mosley, 1989, p. 22); and
- forfeiture of the proceeds of "designated drug offenses" and specific "enterprise crime offenses." In the absence of the proceeds or where they have been commingled with other property, sentencing courts may impose a fine in an equivalent amount in lieu of forfeiture.

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[12] Narcotic Control Act (R.S.C. 1985, c. N-1), Food and Drug Act (R.S.C. 1985, c. F-27), and Income Tax Act (R.S.C. 1952, c. 148 as am. S.C. 1970-71-72, c. 63.)

B. Analysis: Proceeds of Crime Legislation

The enactment of the proceeds of crime legislation represents a most important legal enhancement to the powers of law enforcement to combat enterprise crime and drug trafficking through anti-crime profiteering. After the first year in effect, police forces, and federal and provincial officials are still becoming familiar with the intricacies of the legislation and it is too soon for a valid evaluation.

However, the following points are some of the issues that are debated regarding the legislation:

1. Disposition of Forfeited Assets

Normally, all fines and forfeitures under the Criminal Code are paid to the provincial treasury except where the prosecution is conducted by federal prosecutors (ie. drug offenses). While there is provision for the direction of forfeited assets to a municipal treasury, or from the federal to provincial general revenue fund (ie. when a provincial police force conducts a drug investigation) this is at the discretion of the provincial or federal government as the case may be. There are no provisions in Bill C-61 that allow the proceeds seized by a police force to be returned directly to that agency rather than into a general revenue account.

The police argue that because proceeds of crime investigations are often lengthy and resource intensive, they must receive some of the assets in order to be able to afford to initiate these costly investigations. In addition, the costs associated with managing assets seized under the new legislation are perceived to be prohibitive. As one officer put it: "We will not seize anything that eats or requires a management fee."

Canadian police look toward the example from the United States, where the procedures are quite different. The police forces are able to directly gain the use of the items or proceeds forfeited.

While recognizing that these investigations are expensive, the practices in the United States do not appear to be an appropriate response. There is sufficient evidence to indicate that their method of allowing the police forces to directly benefit may result in a biased approach to police work, whereby not the most serious and dangerous offender is aggressively pursued but rather the offender who has the most forfeitable proceeds.[13]

Some mechanism must be worked out whereby the police have the resources and the incentive to pursue these complex and resource intensive proceeds of crime investigations.

2. Disclosure of Income Tax Information

To encourage investigations of the financial circumstances of suspected drug dealers, the Criminal Code now establishes a mechanism to obtain judicial authority for disclosure of tax-related information held by Revenue Canada (s. 462.48).

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[13] The Federal Government is presently studying the larger question of asset management and the distribution of funds forfeited as part of the mid-course review of the national drug strategy.

Some critics maintain that restricting this power to designated drug offenses and not to enterprise crime offenses has created a double standard implied by the fact that application can be made for proceeds investigations in respect of designated drug offenses but not for enterprise crime offenses. There is a perception that forfeiture under traditionally federally prosecuted offenses (i.e. designated drug offenses) are given higher priority than those prosecuted provincially (i.e. enterprise crime offenses).

3. Attorneys General Undertakings

There has been a reluctance on the part of some Attorneys General to prosecute under the provisions of the proceeds of crime legislation. This reluctance stems principally from two new sections (462.32[6] and s. 462.33[6]) of the Criminal Code which require the Attorneys General to enable such undertakings as the judge considers appropriate respecting the payment of damages or costs or both in relation to the making and execution of the warrant or both.

This requirement has raised the concern that Attorneys General would have to pay out damages to third parties affected by a seizure. Further there is the concern of a civil suit being launched against an Attorneys General.

At common law, the Attorneys General is not protected from claims for damages or costs in relation to enforcement of the criminal law on the basis of Crown immunity[14]. As such it has been argued that Attorneys General who give undertakings respecting the payment of costs or damages to a suspect pursuant to subsections 462.32(6) and s. 462.33(6) can be viewed as having relinquished that immunity shield and, thus, leaving themselves open to civil liability (Saint-Denis, 1989, p. 3).

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[14] Nelles v. R. in right of Ontario et al (1985) 46 C.R. (3d) 289 (Ont. C.A.), [1989] S.C.R. 170.

X. FOREIGN AND INTERNATIONAL SUPPORT

As demonstrated in this report, Canadian money laundering operations are inextricably tied to the global laundering network. As such, proceeds of crime investigations by Canadian police forces must have international resources, support and mechanisms for cooperation at the international level.

There exist four mechanisms or avenues that assist with the international components of a proceeds of crime investigation:

- Interpol[15];
- mutual legal assistance treaties (MLATs);
- Canadian law enforcement stationed abroad; and
- force to force (officer to officer) communication.

Proceeds of crime cases have demonstrated that Canadian law enforcement has utilized the different international support mechanisms successfully on many occasions, while on many more occasions they have also experienced frustration. One of the causes of this frustration has been the absence of MLATs with various countries. Without MLATs, Canadian law enforcement agencies often receive limited or no cooperation and/or information from foreign jurisdictions, especially those countries with strict tax secrecy laws. This frustration is increasingly being addressed through the expanding network of MLAT agreements which will also be greatly enlarged with the entry into force of the U.N. Convention on Illicit Drugs in November, 1990.

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[15] For a further discussion on Interpol, Mutual Legal Assistance Treaties and international policing, see Chapter Seven: Money Laundering - An International Perspective.

The international character of enterprise criminal organizations and money laundering operations necessitate that police forces throughout the world develop comprehensive measures which allow cooperation and coordination. As a country which is inextricably tied to this global laundering network, Canada must assume a lead role in this effort. For example, Interpol is only as strong as the sum of its members. As a middle-power country traditionally active in international institutions, Canada might take the lead in developing the utility of Interpol to ensure that effective criminal intelligence communication and cooperation is present among all countries.[16] This is especially vital to enterprise criminal organization and money laundering, both of which incorporate an international character.

In particular, the development of an international database on crime must be encouraged and must incorporate as its central core information on enterprise crime, drug trafficking and money laundering. Likewise, the time consuming processes of negotiating MLATs must continue in order to create a network of countries working together against offenses such as drug trafficking and money laundering.

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[16] RCMP Commissioner Inkster was elected Vice President for the Americas in November, 1988.

XI. CONCLUSION

Despite the difficulties and anomalies inherent in a proceeds of crime investigation, law enforcement in Canada remains the predominant body charged with combatting money laundering in this country. Money laundering poses an arduous challenge for law enforcement in Canada. The complexity of many money laundering operations demand that a wide range of traditional and innovative types of investigative and analytical skills and resources be used.

Specialization and the creation of new units dedicated to this area, increased training and education, utilization of new laws and international cooperation are all indicative of a growing recognition of the importance of anti-crime profiteering as a tool to combat enterprise crime.

However, traditional police training and experience must continue to be supplemented with education in areas of accounting, business and finance. Intimacy with the intricate details of money laundering operations based upon past cases and specialized training in proceeds of crime investigative skills must also be emphasized.

While police officers can be trained in the field of accounting, the in-depth training and experience garnished over the years by a professional accountant cannot be replaced by a few book-keeping courses of a police officer. As the investigative experience of an officer is respected, so should the training and experience of a professional forensic accountant.

The high costs of contracting-out to forensic accountants on a case-by-case basis can be avoided by employing either professional civilians on a full-time basis or providing adequate training for officers and a promotional structure that will not require that they leave this essential area of work.

Police forces must adapt to allow for the promotion of officers who have the ability, and who wish to remain in strategic positions. Forensic accounting, analytical skills and computer expertise are three "specialties" that require that the officer or civilian have the opportunity to remain with a degree of permanence in the designated positions.

At present, the rank is usually attached to the position, rather than to the officer, and hence an officer must leave the position in order to obtain a promotion. Selection of officers and the rewards attached to these key positions must be increasingly based on demonstrated ability to do the job rather than dictated by unrelated bureaucratic considerations.

Police departments must welcome the establishment of active, strategic and tactical analytical units and further, these analytical units must have sufficient support so that they can serve as a viable enforcement tool. The police environment mitigates against quality intelligence. Barriers to the acceptance of change in this area must be patiently but persistently broken down.

The Criminal Intelligence Service Canada has great potential to take a lead role in developing intelligence programs and computer-based information systems devoted to proceeds of crime and money laundering. Stand-alone intelligence systems that are to be found in most police departments must be linked into systems that allow for a sharing of criminal intelligence.

Opportunities to link systems together in such a way as to allow for a sharing of intelligence is part of a greater recognition of separate police departments as being "policing partners" that extend across Canada. Police intelligence must not be jealously guarded but rather treated as "corporate property" and used in a manner that positively impacts the combined policing objectives.

Support must be extended by federal and provincial law makers in the way of increased resources and incentives for police forces to undertake proceeds of crime investigations. While recognizing the deficiencies in the United States model of allowing forfeited funds to be returned directly to the police forces, there must be a recognition in Canada of the necessity of covering the costs of proceeds of crime investigations, especially at the municipal level. For example, the Attorneys General of British Columbia has stated that he will direct a proportion of the provincially forfeited funds to law enforcement in that province.

Municipal police forces require greater support. Shortages of resources, experience and incentive in the field of proceeds of crime investigations will continue to hamper their development in this area. This support must be extended by the RCMP in the area of expertise and training.

In addition to enhancements to the coordination and cooperation within the police community, law enforcement must foster an effective relationship with those elements outside of their control (eg. private sector, regulatory bodies, forensic accountants, international bodies, etc.). For the large part, law enforcement is a reactive tool and thus the support of those areas closest to the laundering activity, in particular the private sector and regulatory bodies, is absolutely essential to this effort.

Regulatory bodies must be viewed as essential partners to law enforcement in combatting money laundering and this relationship must extend beyond simply a case-by-case investigative basis. Regulatory officials possess the skills and the expertise in respective industries that can be imparted to police investigators, both in training and in active investigations.

In-house information resources must be developed and utilized to provide both a proactive and reactive tool. The compliance personnel can be used to ensure that individual companies join in the fight against money laundering and the regulatory investigators can serve as an initial screen between private sector referrals and proceeds of crime investigations by law enforcement.

Money launderers shift funds between financial/business institutions and jurisdictions. Launderers know that the more jurisdictions the flow of funds traverses, the less likely it is that the source will be identified. A national strategy with regard to combatting money laundering by Canadian law enforcement including, joint force operations, intelligence information development and sharing, must be the goal.

Finally, the international character of money laundering operations requires that international resources be available. Mechanisms such as Interpol, direct contacts with foreign forces, and stationing RCMP officers abroad have been utilized effectively by Canadian law enforcement in the past and will continue in the future. Likewise, a wide range of mechanisms to allow the efficient exchange of information between countries must be pursued.

Unless a concerted effort is made by all law enforcement bodies to cooperate, to share intelligence, to develop strong financial and analytical capacities, and to undertake combined operations both domestically and internationally, this structural fragmentation will prove to be detrimental to combatting money laundering at the law enforcement level.

CHAPTER TEN

SUMMARY OF FINDINGS AND CONCLUSIONS

I. INTRODUCTION

This report attempts to illustrate the wide range of vehicles through which money can be laundered, with particular emphasis on investment of illicit proceeds into the legitimate economy. The regulatory and enforcement bodies operating in the area are also discussed.

Police cases indicate that launderers use the same kinds of transactions as legitimate business people--petty launderers use small-scale businesses or transactions, while professional launderers may use more sophisticated vehicles. In laundering schemes, such transactions are often used solely to obscure the trail from illicit proceeds to the criminal organization.

Law enforcement becomes particularly difficult when the laundering schemes involve investment into or investment through,[1] legitimate businesses. The sequence of transactions becomes normal from a legitimate business perspective and hence detection becomes more difficult.

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[1] Some schemes involve the ownership of a legitimate business that then becomes a laundering vehicle. Other schemes involve investment into a business that then results in a mingling of legitimate funds and criminal proceeds. Other schemes involve a quick buy/sell flip of a business or real estate often with manipulation of the buy or sell prices.

Despite this report's demarcation of money laundering by specific economic sector, these sectors are not mutually exclusive and a single laundering process may incorporate a myriad of sectors within the national and international economy. Moreover, specific main laundering vehicles such as banking or securities may be used to access other laundering vehicles.

II. FINDINGS

This final chapter will not attempt to summarize all of the findings from each of the separate sectors of the business or financial community. However, building on a knowledge of the range of laundering types, a number of findings can be generalized.

A. Typology of Laundering Schemes

An understanding of money laundering schemes has direct implications for policing and regulatory efforts. Such schemes require:

- different forms of policing or regulation;
- different expertise; and
- different working relationships with other police departments and with the regulatory agencies, professional associations and other organizations involved in controlling criminal or unprofessional behaviour.

Laundering schemes range from the simple to the highly complex. The level of sophistication of the scheme is usually commensurate with the size of the criminal enterprise, its access to financial and business expertise, the amount of money generated by the activity, and length of time in operation.

The most common money laundering scenarios involve drug trafficking, are situated in large urban centres, and make use of nominees to hide ownership of the proceeds. These features reflect the enormous profits realized through drug trafficking, the anonymity urban centres offer to criminals, and the lower risk of suspicion large financial transactions attract in urban settings.

Money laundering schemes are too diverse to allow for strict classification. However, the police cases reviewed suggest a typology based on the following variables:

- the nature of the transactions--level of sophistication/complexity and jurisdictional breadth of the schemes;
- diversity of sectors used as laundering vehicles and the number of separate transactions in the scheme; and
- size of transactions (ceiling) tolerated within the scheme.

In each case the variables fall along a continuum:

- simple laundering schemes--to sophisticated operations;
- schemes with a limit imposed as to how much money can be laundered--to schemes with no discernable ceiling;
- single transactions--to serial schemes;
- local--to national or international operations.

While the police cases include examples of schemes of every combination, the following combinations occur with greater frequency:

- simple (limited and unlimited);
- serial (simple and complex); and
- international.

1. Simple (Limited and Unlimited)

i. Simple/Limited

"Simple/Limited" schemes are restricted to a few straightforward financial manipulations and are limited in the sense that a ceiling exists on the amount of illicit money that can be laundered without suspicion. A typical laundering vehicle in this category might be a small business, such as a tavern, restaurant, pizza parlour or vending machine company owned or operated by a criminal enterprise. Due to the nature of the "goods" sold by these particular businesses, bookkeeping records of stock and sales can be easily manipulated. As a result, with little risk of detection, criminals can claim extra profits in order to wash illicit proceeds.[2]

While minor amounts can be easily laundered in this manner, there is a ceiling imposed on the laundering activities by the fact that these types of businesses generate an amount of revenue that ought to fall within a predictable range. Any deviation from that range could arouse suspicion among revenue or law enforcement officials.

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[2] By conducting little or no legitimate business, these operations can launder greater amounts of illicit proceeds but at a greater risk of detection.

Detection of these schemes often involves traditional policing methods that bring the police close to the community and aware of who owns which businesses and approximately the extent of each operation. Community policing models which encourage the police to know the business community are a critical factor in enforcement against these types of laundering operations.

Knowing the community may, however, not be sufficient. Police informants remains a valuable asset to policing since some schemes take place on territory that is more "private" than "public" (private businesses or corporations). Without the initial information, the police would have little opportunity to detect such laundering schemes.

Once illicit funds become integrated with legitimate profits, detection may be possible only when the amounts claimed as legitimate profits become so large that they cause suspicion or when police receive information and initiate undercover policing strategies.

While many examples of simple/limited schemes do result in a legitimate source for the illicit proceeds, smaller scale "laundering" schemes may fall short of the classic definition of laundering in that no legitimate source is devised to explain their existence. For example, in the less complete laundering schemes, the illicit funds are merely turned into some less suspicious denominations or a less suspicious form of asset. Cash may be used to purchase real estate, gems, luxury items, stocks etc. for personal consumption. Again, however, no legitimate source has been created for the proceeds and only so many of these items can be consumed without arousing suspicion.

It is important to emphasize that schemes that involve the simple investment of illicit money into the legitimate economy are still of concern to law enforcement, even though there may be no effort made to "launder" these funds.

Police detection of illicit proceeds being used in cash purchases of valuable items occurs either as a result of a net-worth financial investigation as a follow-up to a separate charge such as drug trafficking, or from information reported to the police by the salespersons who become suspicious due to the customer's preference for large cash transactions.

ii. Simple/Unlimited

"Simple/Unlimited" schemes involve only a few straightforward financial manipulations, but are unlimited in that no fixed ceiling applies to the amount of illicit funds that can be washed.[3] Businesses with large budgets and which involve technical operations requiring specific expertise are suited to washing a continuous and large supply of illicit proceeds. Dredging, waste, scrap metal, and construction industries have been found to be particularly suited to ongoing laundering activity.

While there are now attempts at greater regulation, laundering cases from the United States indicate that casinos provide ample laundering opportunities. Large amounts of cash allow the launderer to exchange small bills easily into less suspicious large bills. The possible corruptibility of casino personnel and the illegal uses made of the credit available in many of the gaming establishments provide additional laundering opportunities.[4]

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[3] There is eventually a ceiling within every scheme, at which time enforcement officials and others will become suspicious. However, the schemes in this category allow for extremely large sums of money to be absorbed.

The ceiling on amounts that can be laundered through legalized gaming in Canada may be lower than in the United States due to a difference in the size of the facilities, however, large nightly bingo games, travelling carnival operations, and casinos or monte-carlo nights require a stricter degree of enforcement/regulation than is always the case.

The enforcement difficulties with these types of laundering schemes is that while the schemes may be simple, understanding the operations of these businesses may involve a high level of specialized knowledge that is not always a part of regular police work. For example, in specialized industries such as scrap-metal or construction, the laundering schemes might be simple, but the operation of these businesses is highly complex and policing these operations involves sophisticated financial investigations and likely an informant to provide the initial information. In the area of gaming, the RCMP have difficulty maintaining an adequate number of members trained in this field. Their knowledge becomes a valuable commodity to gaming commissions or gaming operators, and they are actively recruited away from policing.

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[4] Trenton, New Jersey, March 1-4, 1983. See also M. Beare and H. Hampton, Legalized Gambling: An Overview, Department of the Solicitor General, Canada, User Report #1984-13. See also The Use of Casinos to Launder the Proceeds of Drug trafficking and Organized Crime: Hearings Before the Subcommittee on Crime of the House Committee on the Judiciary, 98th Cong., 2d Sess. (1984).

2. Serial (Simple and Complex)

i. Serial/Simple

The sectors of Canada's business and financial community used in laundering illicit money are not mutually exclusive. A laundering scheme will often incorporate a vast series of transactions involving more than one sector of the economic community. "Serial/Simple" schemes involve numerous, yet straightforward financial transactions and manipulations. The number of transactions, however simple, effectively conceals the audit trail which leads back to the criminal. One gap in this trail is all that is necessary to conceal the relationship between the criminals and the proceeds. Therefore, all financial and business institutions must have adequate records in place to avoid launderers using the "weakest" link in the process.

In these types of schemes, money launderers capitalize on the loopholes within the existing regulatory and enforcement network. Where regulatory and enforcement officials work independent of each other, with little sharing of information between the separate bodies, the launderer can make use of services from numerous financial and business institutions with little risk of detection.

ii. Serial/Complex

When schemes involve complex financial manoeuvres, they usually also have an international component. However, a number of police cases within Canada illustrate the creative potential of combining laundering processes.

In "Serial/Complex" money laundering schemes, several transactions are involved, which often require expert knowledge of the markets used. The skills of lawyers and accountants, while useful in many types of schemes, are often an essential component of these sophisticated laundering processes. The use of these skills allows the launderer to engage in imaginative real estate "flips" whereby the stated purchase price is considerably lower than the stated sale price, complex invoicing schemes and stock-market manipulations.

Just as "professionals" may be used in schemes to assist the launderers, likewise professionals may have to be hired or trained in-house to assist the police. Complex financial investigations may involve the use of forensic accountants; skilled analysts may be used to piece together the numerous parts of laundering puzzles; and computer operators may systematically collect and help to package the intelligence.

3. International

The police case analysis revealed that over 80 percent of money laundering performed in Canada involves an international component. In other words, illicit money generated in Canada through illegal activities is either taken out of the country to be laundered, or illicit money generated elsewhere is brought into Canada for laundering.

Transborder movement of illicit proceeds is an essential component of these schemes. The principal motive behind the transborder movement of illicit funds is the power of obstruction: transborder movement blocks the means to ascertain the true source of the funds and thereby impedes subsequent financial investigations.

Canadian criminal enterprises are inextricably linked to the global laundering network. In particular, drug trafficking enterprises require funds internationally for the purchase of narcotics. Exporting the illicit funds offshore and then repatriating the profits back to Canada provides funds for these purchases while eventually allowing the criminal enterprise to enjoy the laundered proceeds in Canada.

The processes involved in each stage are numerous and often complex. Principal methods include "loan-back" schemes, front companies, and double invoicing. While these schemes can be worked within Canada, they have a greater potential to avoid detection if they are done internationally since usually only one set of records (if records are kept) will be available to investigators in Canada and the borders provide an effective barrier to law enforcement.

Policing international money laundering involves a different set of agreements. As this report has suggested, mutual legal assistance treaties between countries may be one of the most powerful tools for international enforcement. These agreements require extensive negotiations and time before each separate treaty is ratified.

Canada has agreed to ratify the 1988 U.N. Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances before the end of 1990. When a sufficient number of countries have ratified this Convention, there will exist a new worldwide minimum set of standards for drug enforcement, including standards regarding money laundering and the seizure, freezing and confiscation of proceeds from illicit drug activities.

B. "Policing" Money Laundering

1. Law Enforcement

As this study suggests, law enforcement of diverse money laundering strategies involves equally diverse policing strategies:

- community-based policing emphasis on "knowing your business community";
- undercover work and use of informants;
- general police enforcement work at the street level;
- special proceeds of crime investigators; and
- specialized forensic accountancy, computer intelligence systems and analytical work.

The range of criminal activities may extend beyond any one offence[5] and therefore police must work with other units, both within and outside of the same police departments, and share intelligence and analytical work with other jurisdictions. For example, a significant drug case may also be a significant organized crime case, fraud case, etc. Working relationships such as Joint Force Operations are a start, but the sharing of intelligence must become a built-in aspect of the policing profession rather than a response to uniquely defined situations.

Police cases and research for this report indicated that there is still a territoriality attached to police work that may hinder a flow of information necessary for effective policing. A sense of competition between forces may in fact be beneficial in some situations, however, when criminals use highly sophisticated national and international networks in their schemes, policing must reflect the same level of coordination and collaboration.

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[5] In the same way that the laundering schemes may use more than one sector of the economy.

Now that the Proceeds of Crime legislation is just over one year old, it is important that it be monitored. To date, efforts towards incorporating proceeds of crime investigations into traditional criminal investigations have been slow. Lack of human resources, financial resources, and expertise have hampered the integration of proceeds of crime investigations into designated drug or enterprise crime investigations. Some mechanisms must be put into place to ensure that if there are considerable funds forfeited as a result of these prolonged investigations, law enforcement receives a proportion in order to cover the direct costs incurred. Therefore, for efficient Proceeds of Crime enforcement police must receive:

- sufficient resources to finance the investigations;
- increasing training and education specific to the unique skills required for proceeds of crime investigations including the hiring or adequate training of specialists such as forensic accountants and skilled analysts; and
- the development of a truly national intelligence information system for proceeds of crime offences.

2. The Interconnectedness of Proceeds of Crime Enforcement

Resourcing one step in the criminal justice process involved in proceeds of crime enforcement puts a strain on the other stages. Policy makers and funding agencies must take a holistic approach to this issue. If the awareness of regulatory agencies to money laundering is increased and they are encouraged to contact the police with reports of "suspicious" transactions, then the police must be standing by with the resources to respond. Likewise, if there are additional anti-drug profiteering officers to carry out the sophisticated investigations, there must be an equally aggressive and well-resourced body of street-level law enforcement officers available to feed information up to the investigators.

As well as adequate police and police resources, there must be sufficient crown prosecutors to handle the potential increase in the caseloads. The number of prosecutors must also be increased to meet the unusual demands of these specific types of cases. As Commissioner Inkster stated before the House of Commons Standing Committee on Justice and the Solicitor General on May 15, 1990, Canadian law enforcement must engage Crown Counsel very early in proceeds of crime investigations in order to obtain from the court an order to seize the proceeds of crime. The Crown must be informed about each step in the investigation rather than merely informed at the investigation's end. In addition, as other agencies such as financial institutions begin to work more closely with law enforcement to identify "suspicious" transactions, more investigations may lead to more cases that must then be prosecuted.

As of May, 1990 the mid-course review of the National Drug Strategy is studying the prosecution resource requirements of the Federal Department of Justice in order to determine what is required to eliminate a backlog of "proceeds" cases and to allow for an enhancement of effort in the prosecution of this type of lengthy case.

3. Industry Regulators for Front-Line Enforcement

i. Industry Initiatives

The position of individual companies within the laundering process necessitates that they and their industry representatives become a central conduit for both proactive and reactive efforts to combat money laundering. Because the private sector is at the front line, the greatest deterrence to the infiltration of illicit monies into Canada's legitimate financial and business sectors can and must be erected at this level. The active participation of the industries used as laundering vehicles must include individual employees, management, owners, and professional associations representing the respective industries.

To date, in proportion to the extent of money laundering occurring in each of these sectors, awareness of the problem and efforts put forth to combat it have been limited. For those industries which have taken the initiative to address this problem, efforts have concentrated on educating industry personnel who come in contact with money launderers and developing polices directed at laundering techniques associated with their respective industry.

The most positive steps in this area have been taken by the chartered banking community. In general, however, leadership from the management and ownership of individual companies as well as professional associations in the form of education and policy and procedural development has been, at best, piecemeal, and at worst, entirely absent.

Record-keeping practices are currently being studied within the financial community by the federal government to ensure that appropriate records are being kept to facilitate the detection and tracing of illicit funds, and that these records are being maintained uniformly for at least five years.[6]

Legislation may dictate the form and duration of record retention, however, compliance with these initiatives must be carried out at the industry level by individual companies with the active involvement of and coordination by professional and trade associations. While it has been possible during this research to study the policies at the headquarters of the main financial institutions, it has not been possible to determine how uniformly these policies are put into practice at the branch level. The success of the Canadian system of compliance with standard policies to enable money laundering investigations relies on a grass-roots acceptance and implementation of the procedures.

This research does not indicate that the United States-style mandatory currency transaction reporting system should be duplicated in Canada. Adequate records and reporting of "suspicious" transactions are essential and should provide the required timely information for the police, while avoiding the intrusive, costly, and cumbersome collection and processing involved in the U.S. model.

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[6] Legislation is currently (May, 1990) being prepared to ensure that required records are produced and maintained to allow law enforcement to carry out money laundering investigations.

ii. Government Regulation

As stated in the 1983 Enterprise Crime Study Report, it is the regulatory system of government which largely carries the burden for monitoring and recording business transactions, "therefore it could reasonably be assumed that regulatory agencies are well placed for identifying and tracing criminal proceeds" (Canada, Department of Justice, p. 26).

However, at present, provincial and federal government regulatory bodies are restricted in their abilities to stem the flow of the proceeds of crime into the sectors of the economy they regulate. This inadequacy stems from a mandate which does not accord most regulatory bodies either the initiative nor the resources to combat money laundering.

In general, regulatory bodies are mandated to protect the public, not to police them. Thus, regulations are aimed at the solvency of the industry itself, not the potential criminal activity of individual customers. For example, regulatory bodies are handicapped by the fact that most regulation takes place on a macro level, and thus, individual transactions which represent money laundering are rolled up into totals that make them invisible.

Despite this inherent weakness, regulatory bodies do maintain the potential to be a critical component in combatting money laundering. They are instilled with significant legislative powers to facilitate the efforts of law enforcement, and an existing regulatory infrastructure and expertise can be adapted to accommodate proceeds of crime initiatives. Thus, the weaknesses do not lie in the legislative powers of these regulatory agencies, but stem from mandates which limit the amount of attention paid to customers and transactions, restrained financial and human resources, the lack of political will, the lack of awareness of the issue of money laundering on the part of the regulatory agency and an apprehension to directly facilitate criminal investigations and seizures due to an emerging body of case law that strongly suggests the separation of administrative and criminal powers.

In the future, regulatory bodies must be cognizant that they are a central player in the fight against money laundering. There must be a commitment to combat this problem. Regulatory personnel must be made aware and trained to identify money laundering in their industry. Formal policies and procedures must be adopted and directed at aspects such as revealing sources of funds invested and beneficial ownership which allow launderers to avoid detection. The main role of the regulatory body in a proactive sense must be to:

- raise awareness among regulatory personnel and regulated institutions on the issue of money laundering;
- educate regulated institutions on money laundering and how to prevent it;
- require that all regulated institutions have polices and procedures in place to combat money laundering; and,
- incorporate into compliance examinations a mechanism to ensure that the above components are in place.

In a reactive sense, regulatory bodies must function as a resource for law enforcement based upon their expertise in this industry and to screen the "suspicious" transaction referrals by the regulated industry. In this respect, regulatory bodies will be able to facilitate law enforcement by only referring to them criminal cases, all the while legally remaining within their administrative jurisdiction.

C. Additional "Gaps" in the Process

1. Foreign Exchange Houses

While other financial institutions may have weaknesses inherent in their responses to money laundering, the institutions classified as foreign exchange houses are largely unregulated with limited or in many cases no paper trail generated from the transactions. While the majority of foreign exchange house are legitimate operations, police cases indicated that some exchange houses deliberately seek to facilitate launderers. In one specific example, the exchange house imposed a higher commission for transactions that were clearly "suspicious" and offered a "back-door" service for large cash deliveries.

This report does not expand on what is needed to close the gaps in the exchange house sector since an entire regulatory mechanism must be put in place. The federal government is studying this particular gap as part of a review of financial record-keeping.

2. Transborder Regulation and International Initiatives and Cooperation

Combatting international money laundering entails the involvement of government agencies which regulate the movement of funds and individuals across national borders as well as cooperative initiatives with foreign governments and international institutions.

In Canada, the government agencies responsible for transborder regulation--Revenue Canada Customs and Excise, Immigration Canada, and Investment Canada--have been restricted in their efforts to combat money laundering which utilize transborder movement of illicit funds.

While Customs Canada has taken some initiative in this area, at present this agency is restricted by the fact that there are no Canadian laws hindering the movement of cash across Canadian borders. As such, there is an absence of regulation requiring cash above a certain amount to be declared to Canada Customs upon leaving or entering this country. Thus, Customs Canada has little power to seize cash that may appear to be suspicious.

Until a transborder currency recording system is implemented, Customs Canada is almost powerless to facilitate the seizure of illicit money entering or leaving Canada. Thus, unlike other regulatory bodies which possess the power but not the resources to facilitate law enforcement, Customs Canada possess the resources but not the legislative powers.

Immigration officers can be involved in circumstances where illicit funds enter the country under the guise of investment capital, however, here resources rather than powers seems to be the problem. Unlike Customs Canada, Immigration officers have the power to ask potential immigrants or visitors how much money they are bringing into Canada. Immigration is also given powers to evaluate the source of an immigrant's money for investment purposes in Canada.

The strength of this government agency in combatting money laundering also lies in its power to refuse admission of individuals under certain circumstances, for example, if they possess a criminal record (Canada, Immigration Act, R.S.C. 1985, c. I-2, s. 2[a]).

Despite these powers, the source of an immigrant's money is rarely scrutinized by Immigration officials. In addition, there are no mechanisms for identifying the legitimacy of funds or for verifying net worth statements. While Immigration officers are empowered to see the money, they possess limited powers of search and seizure. Immigration officials also have restricted direct access to valuable intelligence data, such as criminal record information.

Illicit money entering Canada often occurs under the guise of legitimate investment. The regulation of foreign investment coming into this country is the responsibility of the federal government through Investment Canada. There is, however, limited regulatory scrutiny by Investment Canada to ensure the legitimacy of money which enters Canada as foreign investment. In neither the notification or application process are questions asked about the source of the funds being invested. Applicants are asked to supply only basic information, and few background checks are performed to verify the accuracy of the information. In order to combat illicit money crossing Canada's border, it is essential that these three bodies be given the power and the mandate to combat transborder money laundering.

Finally, since a large percentage of laundering schemes involve an international component, there is a continuing need for the development of a network of mechanisms to facilitate international cooperation. Three key initiatives are:

- mutual legal assistance treaties;
- the continuation of the work of the Financial Action Task Force; and
- the U.N. Convention Against the Illicit Traffic in Narcotics Drugs and Psychotropic Substances.

Mutual legal assistance treaties (MLATs) between nations represent a new and potentially powerful tool to suppress transnational crime in general, and money laundering, in particular. The G-7 countries initiated a Financial Action Task Force which produced 40 recommendations that must now be addressed by each of the participants. While Canada is in compliance with most of the recommendations, there is more work to be done in ensuring continued compliance. The proposed record-keeping legislation must address the need for increased uniformity of financial information recorded as well as the duration of retention. In addition, Canada has now ratified the U.N. Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, in force November 11, 1990. All of these activities are essential for international law enforcement cooperation and assistance.

Therefore, specific to cross-border and international money laundering, the following activities are suggested:

- enacting laws regulating the movement of currency across the Canadian borders;
- greater scrutiny of the source of foreign investment;
- continued negotiations for more mutual legal assistance treaties;

- enactment of legislation to increase the uniformity of financial information recorded as well as the duration of record retention; and

- increasing co-operation between the relevant financial institution regulatory authorities to fully maximize the power of multilateral and bilateral treaties.

3. Role of Professionals as Facilitators in Laundering Schemes

As police cases indicate, certain professionals are extremely useful to money launderers. Lawyers and accountants can be particularly facilitating. As these professions are largely self-regulated, there must be greater efforts taken by the professional associations to recognize the vulnerability of these fields to either corruption or naive involvement in laundering schemes.

In some provinces the law societies are understaffed and underpaid and therefore the disciplinary divisions lack the resources required to be proactive. However, in addition to resource problems, the main difficulty stems from the fact that these societies have not seen their mandate to include aggressive proactive supervision of the legal profession. Police cases studied in this report indicate that both the legal powers of the law profession and the credibility of their status serve launderers. Lawyers served as nominees for clients and served as the intermediary to process cash through financial institutions. The "know your customer" rules of bankers must extend beyond simply knowing that a customer is a lawyer and unusual cash transactions involving lawyers must raise the same suspicions as would transactions with other bank customers.

III. CONCLUSIONS

A successful effort to combat money laundering by all of these societal levels must incorporate both the dismantling of the structural obstacles that restrict their effectiveness at combatting money laundering, and the implementation of initiatives aimed specifically at this problem. These initiatives must be comprised of five essential elements: awareness, commitment, education, policies/procedures, and legislation.

A. Awareness

The first step in any effort to combat money laundering must be to create awareness of the problem. There must be a greater awareness among all levels that they are directly implicated in money laundering and thus, must be involved in the effort to combat it. This is especially apparent within the industry and regulatory levels. Awareness-raising must begin at the federal level and must continue on through the hierarchy of regulatory bodies and law enforcement, professional associations, ownership and management of businesses and finally, the employees of these businesses.

B. Commitment

There must be a sincere commitment on the part of all those implicated in the fight against money laundering. It is essential that this commitment be embraced by those in leadership positions at each level and then conveyed downward through the hierarchy.

C. Education and Training

Once an awareness of the problem and commitment to confronting it has been established, education and training must follow. New skills and knowledge must address preventing laundering activities. This includes how to detect money launderers and how to identify suspicious transactions. In the area of law enforcement, training must focus on developing the specific skills required for laundering investigations. Management must also recognize the importance of training or hiring highly skilled specialists; and then management must 'sell' to police officers a willingness to make appropriate use of this expertise.

D. Policies and Procedures

Specific policies, laying out the strategic procedures on how to approach the problem of money laundering, must be drafted at each level. The drafting of policies has already taken place at some levels. Within the chartered banking community, policies regarding money laundering are in place. At the regulatory level, the federal Office of the Superintendent of Financial Institutions has developed a Best Practices paper to assist federally regulated financial institutions to strengthen their procedures against money laundering. At the law enforcement level, the RCMP now direct all designated drug investigations to incorporate a proceeds of crime component. These types of policies must be extended to all levels and adapted to specific institutional situations.

E. Legislation

In some situations, new legislation or regulations may be required in order to ensure that certain policies be followed or certain records be maintained. The two areas identified in this report are the cross-border movement of currency and the retention of records by financial institutions.

In conclusion, efforts to combat money laundering have been fractionalized and have failed to appreciate the importance of a joint effort by all those implicated in the fight against the proceeds of crime.

Money laundering is an activity that transcends different sectors of the economy, cuts across regional, provincial and national borders and civil and criminal law; in short it touches upon many different elements within a society.

Thus, there must be a truly national strategy involving all regions, economic sectors, police forces, and governments across Canada and must also be extended to include international initiatives. This national approach necessitates that the federal government must provide leadership in coordinating the efforts of the diverse sectors and jurisdictions.

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ONTARIO

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Corporations Act. R.S.O. 1980, c. 95, as am. 1984, c. 14; 1986, c. 64; 1986, c. 70; 1989, c. 69.

Corporation Securities Registration Act. R.S.O. 1980, c. 94, as am. 1989, c. 16.

Corporations Information Act. R.S.O. 1980, c. 96, as am. 1982, c. 23; 1984; c. 3; 1989, c. 69.

Co-operative Corporations Act. R.S.O. 1980, c. 91.

Credit Unions and Caisse Populaires Act. R.S.O. 1980, c. 102, as am. 1981, c. 62; 1983, c. 46; 1986, c. 64; 1989, c. 72.

Extra-Provincial Corporations Act, 1984. S.O. 1984, c. 14.

Land Registration Reform Act. 1984. S.O. 1984, c. 32.

Land Titles Act. R.S.O. 1980. c. 230. as am. 1982, c. 47; 1984, c. 11; 1986, c. 26 & c. 61.

Law Society Act. R.S.O. 1980 c. 233 as am. 1982, c. 60, c. 43; 1986, c. 64; 1989, c. 44 & c. 56.

Limited Partnerships Act. R.S.O. 1980, c. 241 as am. 1989, c. 69.

Liquor Licence Act. R.S.O. 1980, c. 244. as am. 1981 c. 1 and c. 66; 1984, c. 4; 1989, c. 72.

Loan and Trust Corporations Act, 1987. S.O. 1987, c. 33.

Mortgage Brokers Act. R.S.O. 1980, c. 295, as am. 1989, c. 72.

Partnerships Act. R.S.O. 1980, c. 370, as am. 1986, c. 64.

Partnerships Registration Act. R.S.O. 1980, c. 371.

Public Accountancy Act. R.S.O. 1980 c. 405, as am. 1989, c. 72.

Real Estate and Business Brokers Act. R.S.O. 1980, c. 431, as am. 1989, c. 72.

Registry Act. R.S.O. 1980, c. 445 as am. 1981, c. 17; 1982, c. 46; 1984, c. 32; 1986, c. 62

Securities Act. R.S.O. 1980, c. 466; as am. 1984, c. 59; 1985, c. 5; 1986, c. 64; 1987, c. 7; 1987, c. 33; 1989, c. 72.

PRINCE EDWARD ISLAND

Companies Act. R.S.P.E.I. 1988, c. C-14.

Corporation Securities Registration Act. R.S.P.E.I. 1974, c. C-23.

Credit Union Act, R.S.P.E.I. 1988, c. C-29.

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Licencing Act. R.S.P.E.I. 1988, c. L-11.

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QUEBEC

Barreau Du Quebec Act. R.S.Q. 1977, c. B-1 as am. 1979, c. 57, c. 63 & c. 48; 1982, c. 32; 1983, c. 22; 1984, c. 27; 1985, c. 29 & c. 6; 1986, c. 95; 1987, c. 79, c. 54 & c. 85; 1987, c. 79; c. 54 & c. 85; 1988, c. 29 & c. 51.

Chartered Accountants Act. R.S.Q. 1977 c. C-48, as am. 1982, c. 26; 1983, c. 54; 1984, c. 38 & c. 39; 1987, c. 17; 1988, c. 64 & c. 84.

Public Inquiry Commissions Act. R.S.Q. 1977 c. C-37. as am. 1986, c. 95; 1984, c. 39; 1985, c. 38; 1988, c.84.

Companies Act. R.S.Q. 1977, c. C-38, as am. S.Q. 1979, c. 31; c.28; 1982, c. 52; 1987, c. 5 & c. 4.

Companies Information Act. R.S.Q. 1977, c. R-22, as am. S.Q. 1978, c. 84; 1982, c. 26 & c. 48; 1986, c. 58.

Extra-Provincial Companies Act. R.S.Q. 1977, c. C-46, as am. S.Q. 1979, c. 31; 1982, c. 52; 1987, c. 95.

Securities Act. R.S.Q. 1982, c. V.1.1, as am. 1982, c. 48; 1984,c. 41; 1985, c. 17; 1985, c. 5; 1987, c. 40; 1988, c. 64.

SASKATCHEWAN

Barristers and Solicitors Act, R.S. 1967, c. 18, as am. 1969, c. 28, 27; 1970, c. 29; 1970-71, c. 28; 1977, c. 23; 1978-79, c. 11; 1980, c. 25; 1983, c. 17; 1984, c. 16; 1986, c. 23; 1988, c. 21.

Business Corporations Act, R.S.S. 1978, c. B-10, as am. S.S. 1979, c. 6; 1985, c. 44; 1983, c. 37.

Business Names Registration Act, R.S.S. 1978, c. B-11, as am. 1980, c. 2 and 3.

Companies Act, R.S.S. 1978. c. 23.

Companies Winding-Up Act. R.S.S. 1978, c. C-24.

Central Trust Company Act. R.S.S. 1983-84, c. 3.

Credit Union Act. R.S.S. 1984-85-86, c. 45.1.

Partnership Act. R.S.S. 1978, c. P-3.

Trust and Loan Companies Act. 1980, c. T-22.1

UNITED STATES

Currency and Foreign Transactions Reporting Act (31 U.S.C. 5311).

Comprehensive Crime Control Act, 1984 (98 U.S.C. 473)

The Anti-Drug Abuse Act of 1986 (99 U.S.C. 570)

The Anti-Drug Abuse Act of 1988 (106 U.S.C. 90)

AUSTRALIA

Proceeds of Crime Act 1987. No. 87 of 1987.

Cash Transactions Report Act. 1988, No. 64 of 1988.

CANADIAN LEGAL CASES CITED

Archambault vs. Le Comite de Discipline du Barreau du Quebec, [1989] Cour Superieure de Quebec, District de Montreal, M. le juge Jean-Marie Brassard.

Attorney General for Canada v. Thibault, [1986] 87 D.T.C. 5085.

Attorney General for Ontario v. Stranges, [1984] 12 C.C.C. (3d) 455.

Duarte v. R., [1990] 17 C.R.D. 950-01.

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Smith v. R., [1985] C.C.L. 10868.

CONTACTS

LAW ENFORCEMENT

Royal Canadian Mounted Police

Headquarters:

- **Drug Enforcement Directorate**
  - Anti-Drug Profiteering
  - Strategic Intelligence Branch

- **Economic Crime Directorate**
  - Enterprise Crime Section
  - Bankruptcy Section
  - Commercial Crime Section
  - Market and Securities Section

- **Foreign Services Directorate**

- **Criminal Intelligence Service Canada Directorate**

- **Informatics Directorate**

Divisions:

- **"C" Division**
  - Commercial Crime

- **"D" Division**
  - Commercial Crime

- **"E" Division**
  - Commercial Crime
  - Drug Enforcement

- **"F" Division**
  - Anti-Drug Profiteering

- **"G" Division**
  - Criminal Operations

- **"H" Division**
  - Federal Policing

- **"K" Division**
  - Commercial Crime

- **"O" Division**
  - Commercial Crime

Ontario Provincial Police

Headquarters:

Anti-Rackets Branch
Drug Enforcement Branch
Criminal Intelligence Branch

Vancouver Police Department

Fraud Unit
Vice Unit

Edmonton Police Department

Proceeds of Crime Unit

Calgary Police Department

Commercial Crimes Unit

Saskatoon Police Department

Fraud Unit

Winnipeg Police Department

Vice Unit

Waterloo Regional Police Force

Drugs Unit

Hamilton-Wentworth Regional Police Force

Drugs Unit

Metro Toronto Police Department

Proceeds of Crime Squad

Durham Regional Police Force

Criminal Investigations Branch

Montreal Police Force

Halifax Police Force

GOVERNMENT

CANADA

Department of Consumer and Corporate Affairs

Corporations Branch
    Corporate Services Division
    Enforcement and Investigation DIvision
    Corporate Examination Section
    Compliance Section

Superintendent of Bankruptcies

Department of Employment and Immigration Canada

Business Immigration
    Self-Employed and Entrepreneur Programs

Immigrant Investor Program

Department of External Affairs and International Trade

Economic and Trade Policy Branch

Department of Finance

Financial Institutions Section

Investment Canada

Investment Review Division

Office of the Superintendent of Financial Institutions

Deposit-Taking Institutions

Registration and Investigations Division

Department of Revenue, Canada

Revenue Canada, Taxation
- Audit Programs and Assessment Division
- Special Investigations Division

Revenue Canada, Customs and Excise
- Interdiction Division
- Cargo and Release Division
- Ottawa Central District
- Audit and Evaluation Branch

ALBERTA

Department of Consumer and Corporate Affairs

- Corporate Registry
- Licensing
- Real Estate

Department of the Attorney General

- Personal Property Registration Branch
- Criminal Division

Alberta Securities Commission

- Enforcement
- Registrar

BRITISH COLUMBIA

Ministry of the Attorney General

- Land Titles Office
- Land Policy Branch
- Criminal Justice Branch

Ministry of Finance and Corporate Relations

- Corporate Relations
- Real Estate Council of British Columbia

Superintendent of Financial Institutions

- Corporate Investigations

Ministry of International Business and Immigration, B.C.

International Financial Centre: Vancouver

B.C. Securities Commission

Compliance and Enforcement Division
Corporate Finance
Policy and Legislation

MANITOBA

Department of the Attorney General

Land Titles Office
Personal Property Registry

Department of Cooperative, Consumer and Corporate Affairs

Companies And Business Names Branch
Cooperative and Credit Union Development and Regulation
Credit Union Stabilization Fund

Manitoba Securities Commission

Registration Officer (Securities)
Registrar (Real Estate Brokers)

NEW BRUNSWICK

Department of Justice

Corporate and Trust Affairs
Registrar of Deeds and Personal Property and Register General of Land Titles
Credit Unions and Cooperatives

NEWFOUNDLAND

Department of Justice

Registrar of Deeds, Companies and Securities
Real Estate

NORTHWEST TERRITORIES

Department of Justice

Land Titles/Legal Registries

NOVA SCOTIA

Department of the Attorney General

Companies Branch
Nova Scotia Securities Commission
Registry of Deeds

Department of Consumer Affairs

Credit Unions and Trust Companies Division

ONTARIO

Ministry of Attorney General

Criminal Law Division

Ministry of Consumer and Commercial Affairs

Business Practices Division
Companies Branch
Business Regulation Branch
Consumer Services Branch (Investigation Section)
Office of the Registrar of Real Estate and Business Brokers
Travel Industry Act, Registrar

Registration Division
Real Property Registration Branch
Land Registry Offices

Liquor Licence Board of Ontario

Ministry of Financial Institutions

Office of Superintendent of Deposit Institutions:
Loan and Trust Corporations Branch
Credit Unions and Co-operatives Branch

Ministry of Financial Institutions, Ontario

Investigations Branch

Office of the Registrar of Mortgage Brokers

Ontario Securities Commission

Enforcement and Market Regulation
Office of the Chief Accountant
Corporate Finance

PRINCE EDWARD ISLAND

Department of Justice

Corporations Division

QUÉBEC

Inspecteur Général des Institutions Financères

Surintendant des institutions de dépôts
Direction des Enterprises

Commission des valeurs mobiliéres du Québec

Service de l'inspection
Service de l'inscription

SASKATCHEWAN

Department of Consumer and Commercial Relations

Corporations Branch
Licensing and Investigation Branch
Deputy Superintendent of Insurance
    Licensing and Investigations Branch

Saskatchewan Credit Guarantee Corporation

YUKON

Department of Justice

Land Titles

UNITED STATES OF AMERICA

Department of the Treasury

- Office of Financial Enforcement
- Financial Crimes Enforcement Network (FINCEN)

Department of Justice

- Drug Enforcement Administration
- Office of Deputy U.S. Attorney (Southern District of New York)
- Narcotics and Dangerous Drugs Section

Federal Deposit Insurance Corporation

Comptroller of the Currency

Securities and Exchange Commission

STATE OF NEW YORK

Federal Reserve Bank of New York

- Compliance Examination Division

State of New York Banking Department

- Special Investigations Division

AUSTRALIA

Cash Transaction Reporting Agency

INTERNATIONAL INSTITUTIONS

United Nations (Economic and Social Council)

International Criminal Police Organization (INTERPOL)

Bank for International Settlements

PRIVATE SECTOR

Chartered Banks

Canadian Bankers Association

Bank of Montreal
Bank of Nova Scotia
Toronto Dominion Bank
Royal Bank of Canada
Canadian Imperial Bank of Commerce
National Bank of Canada
Laurentian Bank of Canada
HongKong Bank of Canada

Trust Companies

Trust Companies Association of Canada

Canada Trust
Central Guaranty Trust Company
Montreal Trust
National Trust
Royal Trust
Peace Hills Trust
Inland Trust and Savings
Dominion Trust
Investors Trust
Northwest Trust
Aetna Trust
Municipal Trust
Guardian Trust
Pacific and Western Trust
Confederation Trust

Credit Unions

Credit Union Central of Ontario
Ontario Credit Union League Ltd
Canadian Co-operative Credit Society
Credit Union Stabilization Corporation (Alberta)

Ottawa Community Credit Union
CS Co-op
Omista Credit Union
Belgian Credit Union

Lawyers

Canadian Bar Association
Canadian Federation of Law Societies
British Columbia Law Society
Alberta Law Society
Saskatchewan Law Society
Manitoba Law Society
Law Society of Upper Canada
Barreau du Québec
New Brunswick Law Society
Newfoundland Law Society
Nova Scotia Barrister's Society
Prince Edward Island Law Society
North West Territories Law Society
Yukon Law Society

Gowling, Henderson Barristers and Solicitors

Accountants

Certified General Accountants Association
The Institute of Chartered Accountants of Ontario
Certified General Accountants Society
Management Accountants Society

Price Waterhouse Ltd.
Deloitte Haskins and Sells
Peat Marwick Thorne
Oleh I. Hrycko

Real Estate

Society of Industrial Realters
Society of Accredited Mortgage Brokers
Canadian Home Builders Association
Real Estate Board of Ottawa-Carleton
Canadian Real Estate Association
Ontario Mortgage Brokers Association

Couriers

Brinks Canada Limited
Security Division

Purolater Canada Ltd.
Security Division

Federal Express Ltd.
Security Division

Foreign Exchange Companies

Deak Canada Ltd.
Inter Currency Exchange
Remo Exchange
Calgary Foreign Exchange
Tunnel Currency Exchange
Continental Currency Exchange
Toronto Currency Exchange
R and G Foreign Exchange
Bendix Exchange
La Compaignie de la National Commerciale
Lenlyn Montreal Ltd.
Maitre de la Monnaie Internationale Ltee.
Echange Federal Commercial
Money Mart
Blue Water Currency Exchange
International Securities Exchange
Empress Foreign Exchange
Tele Trip
Pacific Coin Centre
Victoria Foreign Exchange Service
Maison de change Forexco Ltée

Securities

Investment Dealers Association of Canada

Midland Doherty Ltd.
Burns Fry Limited
Dean Witter Canada
Marathon Brokerage
Merrill Lynch Canada Ltd.
Richardson Greenshields of Canada ltd.
Scotia McLoed Inc.
Wood Gundy Inc.

National Trust Company
- Stock Transfer Operations

Toronto Stock Exchange
- Investigative Services
- Market Integrity
- Market Surveillance

Bourse du Montréal (Montreal Exchange)
- Quality of Markets
- Market Surveillance

Vancouver Stock Exchange
- Regulation and Membership
  - Market Surveillance
  - Compliance

Alberta Stock Exchange
- Listed Companies and Member Regulation Division
- Listed Companies Division
- Member Regulation Division
- Market Surveillance and Investigation Division